

# THE UNITED NATIONS HUMAN RIGHTS COUNCIL: REFORM OR REGRESSION?

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## HEARING BEFORE THE SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS AND INTERNATIONAL OPERATIONS OF THE COMMITTEE ON INTERNATIONAL RELATIONS HOUSE OF REPRESENTATIVES ONE HUNDRED NINTH CONGRESS

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WEDNESDAY, SEPTEMBER 6, 2006,

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS  
AND INTERNATIONAL OPERATIONS,  
COMMITTEE ON INTERNATIONAL RELATIONS,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2 o'clock p.m. in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith (Chairman of the Subcommittee) presiding.

Mr. SMITH. I am pleased to convene this hearing of the Subcommittee on Africa, Global Human Rights and International Operations. Today we will be examining issues related to the new United Nations Human Rights Council, which held its first session from the 19th to the 30th of June, and two special sessions in July and August, respectively.

I believe that it is tragic and dismaying in the extreme to note that despite the self-congratulatory euphoria of last March at its creation, the new human rights machinery remains broken, in need of serious repair and fundamental reform. The Human Rights Council has, thus far, continued the credibility deficit of its predecessor. The victims of abuse throughout the world deserve better. And, thus far, they haven't gotten it.

Not only did the Council unfairly and myopically, in my opinion, criticize Israel at its inaugural session, but both special sessions convened to date—on July 5–6 and August 11—were held exclusively to condemn Israel with nary a mention of egregious abuse by Hezbollah or Hamas or the roles of Syria and Iran.

Amazingly, there has been no special session on the ongoing—and worsening—genocide in Darfur. No special session on the systematic use of torture by the People's Republic of China, or even though Manfred Nowak, the UN's own rapporteur on torture last December issued a scathing report on the pervasive use of torture by the Chinese Government; no special session on Cuba's abuse of political prisoners or on Burma or on North Korea or Belarus or Iran or Zimbabwe. Just Israel.

Not only has the Council expended all of its efforts on Israel, but it has also failed to do so in a fair and equal manner. The Council has made no reference to the roles, as I indicated, of Hamas, Hezbollah, Syria or Iran in the creation of the situation concerned or to the harm inflicted by parties other than Israel. Thus, the early evidence indicates that the Council has already been co-opted by an extremely biased and narrow agenda.



This development is of extreme concern, both for the international human rights community and for those of us convinced of the need for reform at the United Nations. The Human Rights Council, and through it the United Nations as a whole, have a vital role to play in the promotion and protection of human rights. It is critical that the United States and other human rights defenders do everything, and as quickly as possible, to reverse the direction in which the Council is heading.

By way of background, on April 19, 2005, this Subcommittee held a hearing on the Council's predecessor, the UN Commission on Human Rights. In my statement at that hearing, I noted that the Commission had come under increasing criticism from numerous quarters. A UN High-Level Panel concluded in December 2004 that the Commission's capacity to fulfill its mandate had been undermined by eroding credibility and professionalism. The panel pointed out that states with a poor human rights record cannot set the standard for human rights. UN Secretary-General Kofi Annan later agreed with this assessment, and he told the Commission that, "Unless we re-make our human rights machinery, we may be unable to renew public confidence in the United Nations itself."

On March 15, 2006, the UN General Assembly adopted a resolution that replaced the discredited Commission with the Human Rights Council. The General Assembly gave the Council the mandate to promote "universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner," and to "address situations of violations of human rights, including gross and systematic violations."

The United States, as we know, was one of four countries to vote against the resolution. The U.S.'s opposition was based on the absence of a stronger mechanism to maintain credible membership, and thus the lack of an assurance that the Council would be an improvement over its predecessor.

In my public statements issued immediately after the resolution's adoption, I expressed by deep disappointment that the General Assembly had settled for a weak and deeply flawed replacement for the Commission. The flaws I noted included the membership concerns expressed by the United States, as well as the lack of protection for Israel from unfair and biased special sessions, which now we have seen are happening.

Another potentially serious flaw that I have noted is the Council's mandate to promote follow-up to the goals and commitments related to the promotion and protection of human rights emanating from UN conferences and summits. My concern is based in large part on the serious distinction that exists between human rights treaties and consensus documents resulting from UN conferences.

Treaties are negotiated by UN member states, and they may or may not be subsequently ratified through the established approval process of each country. Those states that do ratify a treaty thereby agree to be bound by its provisions under international law.

UN conference documents, on the other hand, are the result of policy debates and are agreed to by consensus at the end of the conference. These consensus documents are not negotiated as legally-binding instruments and are not subjected to a ratification



process. They do not have, and should not have, the same legal authority as treaties.

For this reason, the UN General Assembly was extremely misguided when it assigned the Human Rights Council the task of promoting these conference commitments. By doing so, it threatens to diminish the moral and legal persuasiveness of internationally-recognized human rights by equating them with mere policy directives.

Even more troubling, the resolution calls for the promotion of human rights emanating from UN conferences. The very word “emanating” implies that a characteristic or action need not be clearly defined in a conference document in order for the Council to undertake its promotion. This, together with the fact that these conference documents are consensus documents, raises the specter that any number of characteristics or actions may slide their way into the international human rights framework without the ratified agreement of countries who would then be pressured to abide by their provisions. Such a gaping loophole in the international legal process is antithetical to the democratic ideals of our own country and to the principles on which the United Nations is based.

This potential for gross abuse of the United Nations human rights mechanisms is already being realized with respect to the issue of abortion. For several years now, the Committee on the Elimination of Discrimination against Women, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have been pressuring governments to legalize abortion even though no UN human rights treaty addresses the issue.

These and other treaty bodies pursue this ideological agenda while ignoring the fact that abortion exploits women and is an act of violence against children.

Just 2 weeks ago, the Committee on the Elimination of Discrimination against Women published concerns about the illegality of abortion in Chile and the Philippines. In October 2005, the Human Rights Committee decided in a case from Peru presented to it under the ICCPR Optional Protocol that denying access to an abortion violates women’s human rights. It made no reference to the unborn child’s right to life and to be free from the terrifying effect of an array of child killing poisons, currently on the market, or dismemberment.

Even the Committee Against Torture, which is responsible for monitoring compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is joining this assault on unborn children.

In February of this year, pursuant to its review of Peru’s compliance with the Convention, the committee concluded that Peru’s omission in failing to provide abortion constitutes cruel and inhuman acts. The committee has no basis in the Convention for challenging the state party’s refusal to provide an abortion.

However, if one were to concede that the committee is warranted in examining the issue of abortion under article 16, then the committee would have no choice but to conclude that chemical poisoning and dismemberment of the fragile, sensitive body of an unborn child is a cruel and inhuman act.



And I would also note parenthetically that we now know that unborn children feel pain from at least the 20th week onward—perhaps even earlier, which is why I have introduced into Congress the Unborn Child Pain Awareness Act, which is now pending in committee.

In many of their decisions, these treaty bodies do not refer to the text of the treaty they are supposed to be monitoring, but to documents adopted at UN conferences, and again, they never take note of the statements of explanation or conditionality put on to their approval or their consensus by governments at the time of their adoption. They do so out of necessity since the countries that they are pressuring have never agreed to legalize or provide for the destruction of the life of an unborn child in the instruments that they have ratified.

Based on this entrenched and growing manipulation of the UN human rights mechanisms to promote abortion, there is reason to believe that the Human Rights Council will also be co-opted into promoting ideological agendas at variance with the established human rights norms of the international community.

Finally, the skepticism generally about the ability of the Human Rights Council to promote human rights and address human rights violations, and to do so in a fair and equal manner, has increased with the election of its members, and as I have indicated, subsequent activity. Although the General Assembly resolution states that its members must take into account the contribution of candidates to the promotion and protection of human rights, such notorious human rights abusers as China, Cuba and Saudi Arabia were elected to the Council. Since it began its work less than 3 months ago, the Human Rights Council has issued three country-specific resolutions, all of them targeting just one country.

I therefore have convened this hearing to examine what needs to be done to prevent the Council from repeating or further regressing from the failures of the Commission on Human Rights, as well as to support any signs of improvement over its predecessor. The Subcommittee is interested in exploring how the Council is being assisted by the United States and others to fulfill its mandate, the areas in which further assistance and reform is required, and the standards that the Human Rights Council will need to meet in order to qualify as a credible international human rights body.

In his address in April 2005 to the Commission on Human Rights, the UN Secretary-General argued for a new, reformed human rights Council on the basis that it would “allow for a more comprehensive and objective approach.” He went on to say, “it would produce more effective assistance and protections, and that is the yardstick by which it would be measured.”

It is not too soon to start measuring the Council by this yardstick, and we look forward to hearing the testimony of our distinguished witnesses that will provide us with the means for such an evaluation.

My good friend, Congressman Rohrabacher, has just joined us. Congressman, do you have any opening comments?

[The prepared statement of Mr. Smith follows:]



PREPARED STATEMENT OF THE HONORABLE CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY AND CHAIRMAN, SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS AND INTERNATIONAL OPERATIONS

I am pleased to convene this hearing of the Subcommittee on Africa, Global Human Rights and International Operations. Today we will be examining issues related to the new United Nations Human Rights Council, which held its first session from the 19th to the 30th of June, this year, and two special sessions in July and August, respectively.

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Amazingly, there has been no special session on the ongoing—and worsening—genocide in Darfur. No special session of the systematic use of torture by the People's Republic of China, even though Manfred Nowak, the U.N.'s own rapporteur on torture recently issued a scathing report on the pervasive use of torture by the Chinese government; No special session on Cuba's abuse of political prisoners or on Burma or North Korea or Belarus or Iran or Zimbabwe. Just Israel.

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This development is of extreme concern, both for the international human rights community and for those of us convinced of the need for reform at the United Nations. The Human Rights Council, and through it the United Nations as a whole, have a vital role to play in the promotion and protection of human rights. It is critical that the United States and other human rights defenders do everything, and as quickly as possible, to reverse the direction in which the Council is heading.

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In my public statement issued immediately after the resolution's adoption, I expressed my deep disappointment that the General Assembly had settled for a weak and deeply flawed replacement for the Commission. The flaws I noted included the membership concerns expressed by the United States, as well as the lack of protection for Israel from unfair and biased special sessions.

Another potentially serious flaw that I have noted is the Council's mandate to promote follow-up to the goals and commitments related to the promotion and protection of human rights emanating from United Nations conferences and summits. My concern is based in large part on the serious distinction that exists between human rights treaties and consensus documents resulting from UN conferences. Treaties are negotiated by UN member states, and they may or may not be subsequently ratified through the established approval process of each country. Those states that



do ratify a treaty thereby agree to be bound by its provisions under international law. UN conference documents, on the other hand, are the result of policy debates and are agreed to by consensus at the end of the conference. These consensus documents are not negotiated as legally-binding instruments and are not subject to a ratification process. They do not have, and should not have, the same legal authority as treaties.

For this reason, the UN General Assembly was extremely misguided when it assigned the Human Rights Council the task of promoting these conference commitments. By doing so, it threatens to diminish the moral and legal persuasiveness of internationally-recognized human rights by equating them with mere policy directives. Even more troubling, the resolution calls for the promotion of human rights “emanating” from the UN conferences. The very word “emanating” implies that a characteristic or action need not be clearly defined in a conference document in order for the Council to undertake its promotion. This, together with the fact that these conference documents are consensus documents, raises the specter that any number of characteristics or actions may slide their way into the international human rights framework without the ratified agreement of countries who would then be pressured to abide by their provisions. Such a gaping loophole in the international legal process is antithetical to the democratic ideals of our own country and to the principles on which the United Nations is based.

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Even the Committee against Torture, which is responsible for monitoring compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is joining this assault on the unborn. In February of this year, pursuant to its review of Peru’s compliance with the Convention, the Committee concluded that Peru’s “omission” in failing to provide abortion constitutes “cruel and inhuman acts.” The Committee has no basis in the Convention for challenging a state party’s refusal to provide an abortion. However, if one were to concede that the Committee is warranted in examining the issue of abortion under Article 16, then the Committee should have no choice but to conclude that the chemical poisoning and dismemberment of the fragile, sensitive body of an unborn child is itself a “cruel and inhuman act.” (And now we know that unborn children feel pain at least at 20 weeks gestation—perhaps earlier, which is why I have introduced the Unborn Child Pain Awareness Act.)

In many of their decisions, these treaty bodies do not refer to the text of the treaty they are supposed to be monitoring, but to documents adopted at UN conferences. They do so out of necessity, since the countries they are pressuring have never agreed to legalize or provide for the destruction of the life of the unborn in the instruments that they have ratified. Based on this entrenched and growing manipulation of the UN human rights mechanisms to promote abortion, there is reason to believe that the Human Rights Council will also be co-opted into promoting ideological agendas at variance with the established human rights norms of the international community.

The skepticism generally about the ability of the Human Rights Council to promote human rights and address human rights violations, and to do so in a fair and equal manner, has increased with the election of its members and subsequent activity. Although the General Assembly resolution states that its members must take into account the contribution of candidates to the promotion and protection of human rights, such notorious human rights abusers as China, Cuba and Saudi Arabia were elected to the Council. Since it began its work less than three months ago, the Human Rights Council has issued three country-specific resolutions, all of them targeting just one country. Such egregious and long-time human rights abusers as Sudan, China, Cuba, Burma, Iran, North Korea, Zimbabwe and Belarus have not even been mentioned on the agenda.



I therefore have convened this hearing to examine what needs to be done to prevent the Council from repeating or further regressing from the failures of the Commission on Human Rights, as well as to support any signs of improvement over its predecessor. The Subcommittee is interested in exploring how the Council is being assisted by the United States and others to fulfill its mandate, the areas in which further assistance and reform is required, and the standards that the Human Rights Council will need to meet in order to qualify as a credible international human rights body.

In his address in April 2005 to the Commission on Human Rights, the UN Secretary-General argued for a new, reformed human rights council on the basis that it would "allow for a more comprehensive and objective approach. And ultimately it would produce more effective assistance and protections, and that is the yardstick by which we should be measured." It is not too soon to start measuring the Council by this yardstick, and we look forward to hearing the testimony of our distinguished witnesses that will provide us with the means for such an evaluation.

Mr. ROHRABACHER. First and foremost, I would like to thank Congressman Smith for not only this hearing, but all of his activities that are aimed at alerting the American people to the reality of the United Nations and the challenges that we face internationally.

There are so many people in the United States that because of—I have to call an overwhelming public relations campaign on the part of the United Nations—have an inaccurate view as to just what the reality of the United Nations is all about, and Congressman Smith has done more to try to alert us to the realities of—to the limitations of that organization because if we mistakenly place our faith in an organization that is a facade, and that instead whose flaws weigh down its own capabilities of doing good, we will pay the price, and there already has been the price paid in Africa and elsewhere where hundreds of thousands of people have lost their lives because we have erroneously relied on the United Nations to do what was right.

We have to always be aware that a significant number of members of the United Nations, the UN member states, are controlled by criminal cliques. They are not only non-democratic, many of these countries are authoritarian and run by criminals. These people run rough shod over their own people, and they have learned also how to make sure that they are using their influence on organizations like the United Nations to protect their positions in their own country rather than having the United Nations as a force for democratization and liberalization. Of course no where is that more evident than the hypocrisy that is seen in what was the United Nations Commission for Human Rights, and now I guess what is called the United Nations Council on Human Rights.

But words are irrelevant. What is relevant is whether or not we have a standard of truth and justice that is a standard not based on some sort of political accommodation with a solitarian regime, which so often happens in the United Nations.

So I would like to thank Representative Smith for his leadership, and I am glad to participate today and look forward to the testimony. Thank you very much.

Mr. SMITH. Chairman Rohrabacher, thank you very much for your kind comments, and for your extraordinary work in investigating, whether it be the Oil-for-Food scam or any of the other egregious mistakes that have been made by the United Nations. You have been a real leader.

I would like to yield to Dr. Boozman.



Mr. BOOZMAN. Just very briefly. I just want to thank you for holding the hearing, and look forward to the witnesses. Thank you.

Mr. SMITH. Mr. Fortenberry.

Mr. FORTENBERRY. Mr. Chairman, thank you as well for focusing our efforts today on the United Nations Human Rights Council. I appreciate your hard work that went into this hearing, and the efforts to keep the issue of human rights central to the work of this Subcommittee and to our consideration of United Nations reform.

I also look forward to hearing from our distinguished witnesses and commend you for your work to keep our Government cognizant of the duty we have to provide fundamental justice and to uphold human dignity for the people subject to the Commission's authority, especially for the world's most vulnerable and marginalized persons.

I believe that it is critical for the UN Human Rights Council to diligently and objectively uphold the principles enshrined in the Universal Declaration of Human Rights, and while I fully understand the concerns which led the United States to vote against the resolution to replace the widely discredited Human Rights Commission with the Council, I am confident that we remain vigilant in our cooperation with Council members in an observer capacity to further our nation's longstanding commitment to an authentic and credible human rights agenda in the United Nations.

It is also my understanding that the United States may consider running for the Council in 2007, and I am eager to hear your testimony and the assessment of the various witnesses today as to whether "reform" or "regression" best describes the Council's activities to date, and how you would envision the prospects for future U.S. participation in the Council.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Fortenberry.

I would now like to introduce our distinguished panel, beginning with Dr. Mark Lagon, who is Deputy Assistant Secretary of State for International Organization Affairs. In his capacity he has broad responsibility for policy development and administration, especially within the UN's human rights policy. Dr. Lagon previously served as member of the Secretary of State's Policy Planning Staff where he focused on UN and international organizations, democracy, human rights, and public diplomacy.

Then we will hear from Ms. Erica Barks-Ruggles, who is Deputy Assistant Secretary for Democracy, Human Rights and Labor. As a career member of the Foreign Service, she focuses on policy, programming, multilateral and global affairs. Ms. Barks-Ruggles has also previously served with the policy and planning staff of the Political Economics Section of the U.S. Embassy in Oslo, Norway, and has been an International Affairs Fellow with the Council on Foreign Relations.

Dr. Lagon, please proceed.



**STATEMENT OF MARK LAGON, PH.D., DEPUTY ASSISTANT SECRETARY, BUREAU OF INTERNATIONAL ORGANIZATION AFFAIRS, U.S. DEPARTMENT OF STATE**

Mr. LAGON. Mr. Chairman and Members of the Subcommittee, it is a pleasure to be here with you again to discuss the UN Human Rights Council, and thank you very much for holding this hearing.

President Bush has proclaimed that at this critical time in the history of freedom no nation can evade the demands of human dignity, and countries like Iran, North Korea, Belarus, Burma, Syria, Zimbabwe and Cuba, governments must become accountable to their citizens and embrace democracy. Much work remains to be done if the new Council is to live up to its noble calling and actually advance these goals.

I appreciate the opportunity to help present the Administration's views on the Human Rights Council and I look forward to hearing the views from the highly regarded witnesses in your second panel. I have to say I consider Jennifer, Brett and Hillel all valuable partners.

My bureau, the Bureau of International Organization Affairs, is responsible for policy related to the institutional workings of multilateral organizations. My good friend and colleague Erica Barks-Ruggles as Deputy Assistant Secretary in the Bureau of Democracy, Human Rights and Labor, works to promote human rights in multilateral organizations, particularly in country-specific cases.

The United Nations Charter specifically called for the creation of a Commission for the promotion of human rights establishing it as one of the founding properties of the United Nations. With the leadership of Eleanor Roosevelt, the Commission on Human Rights is one of the first two functional Commissions set up at the UN. In its early days, that Commission successfully negotiated the Universal Declaration of Human Rights, which for the first time defined international standards and understanding of human rights.

In the intervening years, however, the clarity of purpose was lost as countries responsible for serious human rights abuses sought and obtained membership on the Commission on Human Rights in order to prevent criticism of their own records. In recent years, Sudan was elected and re-elected to the Commission. Libya was chosen as Chair of the Commission on Human Rights, despite the United States calling a vote, breaking a precedent of the past of there never having been votes called, and the United States was defeated in a re-election bid for the first time.

Mr. Chairman, you and I were out at the last full session of the Commission on Human Rights, and we were working together, and I would venture to say that neither of us was surprised by the state of the pathologies of the Commission, and saddened that we weren't surprised anymore.

In the face of those pathologies, Secretary-General Annan called for reform of the human rights machinery in his report last year, in "Larger Freedom." That report stated, "The Commission on Human Rights created a credibility deficit which casts a shadow on the reputation of the UN system as a whole," and he called on member states to replace it.

The resolution creating the Council was crafted over the course of several months of negotiations in New York. The United States



had two major touchstones that it was focused on. One was improving the body's membership through two essential means: Requiring election of members by two-thirds of member states present and voting, and barring the membership of countries such to Security Council sanctions, sanctions related to human rights or the promotion of terrorism. We needed to make sure that the Commission on Human Rights (CHR) successor was populated by fire fighters, not arsonists.

Unfortunately, the negotiated text did not include these criteria. We ultimately called for a vote and voted "no" on the resolution on March 15 of this year in the General Assembly. The Secretary-General, as you have referred to, set the goal of creating a body that was definitively better than the Commission on Human Rights. We felt that an historic opportunity had been squandered for creating a definitively better body, in fact, with the acquiescence of some of our high-minded friends in the world who were willing to settle for good enough.

The new 47-member Council is a subsidiary organization now of the General Assembly rather than the 54-member Economic and Social Council. Its members are elected by the whole UN membership now, rather than just 54 nations in the Economic and Social Council. So, the benefit is that while the country could have been elected to the Commission with 26 votes or even fewer, depending on how many showed up to the ECOSOC election, now the resolution creating the Human Rights Council does require 96 votes at a minimum for election to the Human Rights Council. In addition, all countries elected to the Council are voted on individually, not part of a regional slate as had occurred before.

There is an important difference between the former Commission and the new Council related to its composition. When the body became a subsidiary of the UN General Assembly, it was decided to give the Council the same geographic distribution of seats as in the mother body, the General Assembly. This had the effect of increasing the number of African, Eastern European, and Asian members, regions with countries with mixed records on human rights.

The percentage of countries from the Western European and other group, and the Latin American and Caribbean group declined.

This is significant because many of the African and Asian countries tend to favor economic, social and cultural rights over political and civil rights. These regional groups have historically sought to eliminate country-specific resolutions, which the United States has considered crucial as a tool on human rights.

The current composition of the Council has also given the Organization of the Islamic Conference greater influence, allowing it to focus disproportionately on the Israel/Palestinian conflict at the expense of other troubling situations around the globe. My colleague, Erica Barks-Ruggles, will address some of these implications of the composition of the Council in practice.

I do want to note some positive developments as we saw in the May election. Most regions presented candidates, more candidates than open slots, providing options from which to choose. Some of the worst human rights abusers, such as Sudan and Zimbabwe,



chose not to risk losing and didn't run, and some troublemakers ran and lost; notably Iran and Venezuela.

Additionally, a provision in the resolution creating the Council allows for suspension of the membership of a state that commits gross and systematic violations of human rights with a two-thirds vote of the General Assembly, of the Council if the membership of the Council has the political will to pursue that.

Procedurally, the Council will meet for no less than 10 weeks a year in no fewer than three sessions, so that there is not one once-a-year predictable theatrical session as existed with the Commission on Human Rights. The Council also explicitly has the ability to convene special sessions when it is needed to address urgent situations.

I delivered a formal intervention during the negotiations in New York to create the Council, calling for multiple prudent triggers for special sessions. I requested the majority of the members of the Human Rights Council or a call by the Secretary-General for a special session or a call by the High Commissioner for Human Rights.

Unfortunately, other nations didn't follow our advice and one trigger was created with a rather low bar—a third of the membership of the Council wanting to have a special session. This low bar has allowed some members of the Council to push through two special sessions focused on Israel. Although we lament the grossly unbalanced focus on Israel during the early days of the Council, we are going to strive to protect this mechanism of special sessions to deal with what it was designed to deal with: The most morally troubling situations on multiple continents.

The Council is engaged in two important processes: Developing a universal periodic review mechanism and reviewing all its mandates from the previous Commission. In open-ended consultations, which is the UN-speak for "open to all nations," including observer states, to be full participants, there are negotiations of both of these things.

We believe the Universal Periodic Review ought to be a peer review process in which states take responsibility, but are fully open to NGOs and human rights experts to give information and shine a light on the record of countries.

Second, we seek to ensure that nations are judged in this Universal Periodic Review only on the basis of the treaties that they have ratified. We should think about that in terms of those the United States has ratified.

Third, we would like to see review of all UN member states occur within 5 years and be conducted between the sessions of the Council. We don't want to allow this Universal Periodic Review to crowd out time spent on important technical assistance to transitioning government or frank condemnations of heinous abusers.

In the first year of the Council, it is also reviewing the so-called special procedures and rapporteurs inherited from the Commission on Human Rights. Our mission in Geneva is fighting to preserve those special rapporteurs that are devoted to individual countries, and those important ones that are devoted to political and civil liberties while seeking to diminish the number of thematic mandates related to economic, social and cultural rights that are of questionable merit.



In particular, those rapporteurs are devoted to particular places like Belarus, Burma, Cuba, North Korea and Sudan. They add to the scrutiny offered the international community of the worst human rights abuses in the world, and they need to be sustained.

I just want to say a word about an important tool of the Office of the High Commissioner for Human Rights, which is to be distinguished from the elected body of member states of the Human Rights Council.

The Council will rely on the Office of the High Commissioner for Human Rights to do actual field work to protect and promote human rights around the world. We want to see enhancements to the Office of the High Commissioner for Human Rights, or OHCHR, to have the capacity to deploy human rights monitors rapidly to crisis spots, to boost significantly the number of non-emergency staff in the field, to increase technical assistance and training in countries around the world, and to dispatch fact-finding missions.

The OHCHR should focus its resources on strengthening its field offices, which offer tangible help rather than building up a bureaucratized think tank in comfortable Geneva.

The Secretary-General and the High Commissioner for Human Rights rightly said that in the creation of the Commission the era of norm setting, of developing new treaties and passing lofty rhetorical statements should be succeeded by an era of implementing human rights on the ground. The United States welcomes this approach.

We understand fully that you as Members of the Subcommittee are concerned that the new Human Rights Council is not a real improvement over the Commission on Human Rights. We share these concerns. Many of the Council's collective decisions so far have been troubling. There is still opportunity to improve the Council's membership and to give it mechanisms that really promote human rights. The United States will work hard with our partners in the days and weeks ahead to bring a truly improved body.

Now I am delighted to turn to my colleagues to discuss how the Council has performed to date.

[The prepared statement of Mr. Lagon follows:]

PREPARED STATEMENT OF MARK LAGON, PH.D., DEPUTY ASSISTANT SECRETARY,  
BUREAU OF INTERNATIONAL ORGANIZATION AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. Chairman, it is a pleasure to be with you again today to discuss the UN Human Rights Council. Thank you for holding this hearing to consider recent developments in the UN Human Rights Council, as we move toward the next session. We deeply appreciate the Committee's interest and concern, and commend you for your focus on human rights.

President Bush has proclaimed that, "at this critical time in the history of freedom, no nation can evade the demands of human dignity. In countries like Iran, North Korea, Belarus, Burma, Syria, Zimbabwe, and Cuba, governments must become accountable to their citizens and embrace democracy." It is essential that the new UN Human Rights Council do everything it can to achieve these goals, as it is one of the primary institutions mandated to protect human rights worldwide. The United States is committed to improving this United Nations body, although unfortunately the new Council's sessions so far have been disappointing. Much work remains to be done if the new Council is to become an improvement over its discredited predecessor, and we will work to make this United Nations body live up to its noble calling.

I appreciate the opportunity to present the Administration's views on this new body and look forward to hearing the views from the highly regarded witnesses in



the second panel. They are valued colleagues and deeply committed to promoting freedom and democracy and UN reform.

My bureau, the Bureau of International Organization Affairs, is responsible for policy related to the institutional working of multilateral organizations, and in that role, we work to make the UN human rights machinery as effective and strong as possible. My good friend and colleague, Erica Barks-Ruggles, is a Deputy Assistant Secretary of State in the Bureau of Democracy, Human Rights and Labor and works to promote human rights within multilateral organizations, particularly in country-specific cases.

#### *History of UN Human Rights Machinery*

The United Nations was founded in the aftermath of the Second World War, to help prevent conflicts and assist nations in meeting the needs and aspirations of their people and to protect their human dignity. The United Nations Charter specifically called for the creation of a Commission for the promotion of human rights, thereby establishing this function as one of the United Nations' founding priorities. Indeed, with the leadership of Eleanor Roosevelt, the Commission on Human Rights was one of the first two functional commissions set up at the UN. In its early days, the Commission successfully negotiated the Universal Declaration of Human Rights, which for the first time defined international standards and understanding of human rights. This history demonstrates the importance the UN placed on the promotion of human rights in its early years.

#### *Need for Reform of the Machinery*

In the intervening years, however, that clarity of purpose was lost as countries responsible for serious human rights abuses sought and obtained membership on the Commission in order to prevent criticism of their own records. By 2001 through 2004, the UN's record on promoting human rights reached its absolute nadir. While trouble in Darfur escalated, Sudan was elected and re-elected to the Commission on Human Rights. Unable to block Sudan's re-election, the U.S. delegate walked out of room in protest. During this period, Libya was chosen as the Commission's Chair, notwithstanding a U.S. call for a vote on what is normally a consensus decision. Further, a number of other countries—including Zimbabwe—joined Cuba and other abusers as members of the Commission to prevent criticism of their own records. Also in 2001, the United States was defeated in its bid for re-election to the Commission, for the only time in its history. The organization Reporters Without Borders described the situation best; saying the members of the Commission had become both "judges and defendants." You and I, Mr. Chairman, were in Geneva at the same time last year. We were working together to advance human rights at the last full session of the Commission, all the while saddened because its pathologies no longer surprised us.

In the face of these pathologies, Secretary General Annan called for the reform of the UN human rights machinery in his 2005 report on overall UN reform, "In Larger Freedom." This report stated that the Commission created "a credibility deficit . . . which casts a shadow on the reputation of the United Nations system as a whole" and called on Member States to replace the discredited Commission. Thus began a long, complex process to create the new Council.

#### *Membership Criteria for New Body*

The resolution creating the Council was crafted over the course of several months in New York. The U.S. called for improving the body's membership through two essential means: requiring election of members by two-thirds of UN Member States present and voting, and barring the membership of countries subject to UN Security Council sanctions, under Chapter VII of the UN Charter, for human rights abuses or acts of terrorism. We needed to make sure that the CHR's successor was populated by firefighters, not arsonists. Unfortunately, the negotiated text did not include these criteria and we ultimately called for a vote and voted "no" on the resolution establishing the Council. The Secretary General had set the goal of creating a body definitively better than the Commission. A historic opportunity was squandered, with the acquiescence of some of our high-minded friends who were willing to settle for "good enough." The Human Rights Council was created in a vote of 170 in favor, 4 opposed—the U.S., Israel, Palau, and the Marshall Islands—and three abstentions, by Belarus, Iran, and Venezuela.

The new 47-member Council is now a subsidiary organ of the General Assembly, rather than the Economic and Social Council, or ECOSOC. Its members are elected by all United Nations Member States, rather than just the 54 in ECOSOC. Hence, while a country could have been elected to the Commission with only 26 votes (and fewer if some ECOSOC members were not present and voting), by the terms of the resolution creating the Council, countries require a minimum of 96 votes for election



to the HRC. In addition, an important improvement to the elections procedures in the Human Rights Council as compared to the Commission is that all countries elected to the Council are voted on individually, not as part of a regional slate, as occurred previously.

#### *Composition of Council*

Another important difference between the former Commission and the new Council, one which has greatly influenced the actions of the Council thus far, is its composition. The regional distribution of seats in the Council is patterned after the General Assembly rather than the previous allocation which existed at the Commission. The Commission's membership contained a greater proportion of members from areas of the world that generally respect and promote fundamental freedoms and human rights: the Western European and Other Group—or WEOG—which includes the United States, and the Group of Latin America and the Caribbean—or GRULAC. However, when the General Assembly made the new Human Rights Council a subsidiary body, it decided to give the Council the same geographic distribution of seats as the General Assembly. This had the effect of raising the overall percentage of African, East European and Asian members, regions with mixed records on human rights, on the Council. At the same time, the percentage of countries from the Western Europe and Other Group and the Latin American and Caribbean Group declined.

This is significant because many African and Asian countries tend to favor economic, social, and cultural rights over civil and political rights. These regional groups have historically sought to eliminate country-specific resolutions, which the U.S. has always considered a crucial human rights tool. And the current composition of the Council has also given the Organization of Islamic Conference greater influence, allowing it to focus disproportionately on the Israeli-Palestinian conflict at the expense of other troubling situations around the globe. My colleague, Erica Barks-Ruggles, will further address the implications of this composition in practice.

At the same time, I must note some positive developments. As we saw in the May election, most regions presented more candidates than positions, providing a slate of options from which to choose. Some of the worst human rights abusers chose not to risk losing and did not run—for example, Sudan and Zimbabwe,—and some international troublemakers ran and lost—notably Iran and Venezuela. Additionally, a provision in the resolution creating the Council allows for the suspension of the membership of a State that commits gross and systematic violations of human rights, with a two-thirds majority vote of the Council. If the UN membership shows the will to use it, this could be a potentially useful tool for the future (although the two-thirds threshold will be difficult to reach).

#### *Frequency of Meetings*

Procedurally, the Council will meet no less than 10 weeks per year in no fewer than three sessions. This is an improvement over the Commission's once a year meeting which invariably turned into political theater.

The Council also explicitly has the ability to convene special sessions when needed to address urgent situations, with the support of one-third of the Council members. This provision was designed to enable the body to respond quickly to developing human rights crises. I delivered a U.S. formal intervention during the negotiations in New York to create a Human Rights Council calling for multiple, prudent triggers for special sessions: a request of a majority of HRC members, or a call by the Secretary General or the High Commissioner for Human Rights. Unfortunately other nations didn't follow our advice and insisted on one trigger with an imprudent low bar: one-third of the membership of the Council.

Erica will discuss how this low bar, given the Council's composition, the political climate and recent world events, led to the two first special sessions focusing on Israel. These sessions were a particularly disheartening early indication of the Council's focus, and we will strive to reverse this trend. Although we lament the imbalanced focus on Israel during the early days of the Council, I want to emphasize that we will strive to protect the worthwhile mechanism of special sessions for appropriate situations in the future. We must preserve the Council's ability to draw the world's attention to the most morally troubling situations on a variety of continents.

We will also look for opportunities—such as the mandatory five-year review of the Council's status by the General Assembly—to review, and as needed revise, the Council's structure and work.

#### *Council Mechanisms*

Two important processes are in development at the Council at this time: the establishment of a new Universal Periodic Review (UPR) mechanism and the review



of all mandates of the previous commission. In open-ended consultations taking place throughout the year, the U.S. is a full participant and our diplomatic mission is vigorously promoting the U.S. position.

We believe that the Universal Periodic Review must be a real “peer review” process. Governments should run the UPR. Although the review sessions would ideally be open to the public, welcoming individual experts and civil society organizations to provide input to the process and observe the proceedings, it should be undertaken by and for States. Second, we seek to ensure that nations are judged solely on the basis of treaties that they have ratified. Third, we would like to the review of all UN Member States to occur within five years and be of limited expense, and so suggest that this work be conducted intersessionally to prevent it from precluding other important work of the Council. Our most important criterion for the UPR is that it should not be allowed to crowd out time spent in the Council on important technical assistance to transitioning governments or frank condemnations of heinous abusers.

Meanwhile, as noted, in this first year the Council also is reviewing all special procedures from the Commission on Human Rights to improve upon and rationalize their work. Our objective is to maintain a system of special procedures, expert advice, and an individual complaint procedure. Our Mission in Geneva is fighting to preserve the Special Rapporteurs who examine country-specific situations and to reduce the number of thematic mandates that address economic, social, and cultural rights of questionable merit. These latter mandates were often designed to divert attention from basic freedoms. Mandates such as those in Belarus, Burma, Cuba, DPRK, and Sudan bring the deserved scrutiny of the international community to bear upon these regimes that have demonstrated little regard for the human rights of their citizens. This mandate review, therefore, is an opportunity for the Council to preserve what was good from the Commission, while breaking with its record of “business as usual” on other topics. The special procedure mandates should have a real impact and improve human rights around the world.

#### *Office of the High Commissioner for Human Rights*

An important tool to assist States is the Office of the High Commissioner for Human Rights. Because there is often a misunderstanding about this office, I would like to emphasize that the Human Rights Council—an elected body of UN member states—is separate and distinct from the OHCHR. However, the Council will rely—as did the Commission—on the OHCHR to do the actual fieldwork needed to protect and promote human rights around the world.

We believe the Office of the High Commissioner has the potential to make even greater contributions to the protection of human rights around the world. Technical assistance by the OHCHR can provide much-needed assistance to governments that seek help. Therefore, we want to see enhancements of OHCHR’s capacity for rapid deployment of human rights monitors to crisis spots, to boost significantly the number of non-emergency staff in the field, to increase technical assistance and training in countries around the world, and to dispatch fact-finding missions to trouble spots. It should focus increasing resources on strengthening its field offices, which offer tangible help, rather than building up a bureaucratized think tank in comfortable Geneva.

#### *Conclusion*

The Secretary General and High Commissioner for Human Rights said in the context of retiring the Commission and creating a Council that the era of norm-setting—or inventing treaties and passing lofty rhetorical statements—should be succeeded by an era of implementation of human rights. The United States welcomes this approach.

Mr. Chairman, we fully understand that you and Members of this Committee are concerned about the new Human Rights Council and believe it may not end up being a real improvement over the Commission on Human Rights. We share these concerns. Many of the Council’s collective decisions have been troubling, even if the records of its individual members represent a slight improvement over those of the now defunct Commission.

Still, the requirement for more votes to win a seat on the Council, new precedents such as individual voting for Council members, competitive regional slates for elections, and public pledges by candidates, offer some hope that the membership can be improved further in the future. And, as I described, new Council mechanisms such as the Universal Periodic Review are being established. They, too, may improve the Council’s record on promoting and protecting human rights. The United States will work hard with our partners in the days and weeks ahead to convert these hopes into the reality of a truly improved UN Human Rights Council.



With that, I am delighted to turn the microphone over to my esteemed colleague, Erica Barks-Ruggles, to discuss how the Council has performed to date.

**STATEMENT OF MS. ERICA BARKS-RUGGLES, DEPUTY ASSISTANT SECRETARY, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEPARTMENT OF STATE**

Ms. BARKS-RUGGLES. Mr. Chairman, Members of the Committee, thank you for holding this hearing on the importance of a strong, credible, and capable Human Rights Council.

Mr. Chairman, today I am delivering brief remarks but I ask that longer remarks be submitted for the record.

Mr. SMITH. Without objection, so ordered.

Ms. BARKS-RUGGLES. Thank you.

This hearing, along with your involvement and those of your Committee Members, Mr. Chairman, demonstrates that the U.S. Congress wants the UN Human Rights Council to function as a protector of human rights. Secretary Rice agrees with you. She has stated, "The United States remains committed to supporting the United Nations' historic mission to promote and protect human rights of all the world's citizens" in her remarks when we decided not to run for the Human Rights Council as an explanation of that decision.

I am pleased to join my colleague, Mark Lagon, today. Our bureaus work very closely together on the coordination of UN human rights policy in multilateral organizations. As Mark has discussed, the United States had two major objectives for reform of the deeply discredited Commission on Human Rights. The first was to improve membership. The second was to preserve its critical authorities, including its ability to address egregious violations of human rights.

As he outlined, we have worked hard to create a worthy Human Rights Council, and even though we were unable to vote positively on the creation of the Council, we believed then, and we still believe, that we need to work hard to make this Council the strong, capable, and credible body that we all want it to be. Our history and the value we all place on supporting human rights around the world demand it, and the United States is committed to working with its allies to do just that.

As Mark outlined, the Human Rights Council's record so far has been mixed with regard to the improved membership. For example, the resolution creating the Council said the country should take into account a candidate's human rights record when voting for its membership. The Council's first elections were indeed interesting in this respect, breaking with traditions of the former Commission.

In these elections, for the first time in UN history, candidate countries made public pledges to enforce human rights obligations and standards at home. Most also agreed that their record should be measured not only by their treaty obligations but by how they complied with their pledges. The U.S. did make a pledge even though we chose not to run. This is a significant step, but we are watching closely to see how countries deliver. More importantly, we will see how countries that do not deliver on their pledges are judged by fellow members.



Further, as Mark outlined, a number of members of the Commission on Human Rights opted not to run for the new Council. For example, some countries with very troubling human rights records, including Zimbabwe, Eritrea, and notably Sudan, decided not to seek reelection. They may have doubted that they could get reelected individually to the new body instead of as part of a regional slate. They may also have preferred not to subject themselves early on to the scrutiny of the Universal Periodic Review, which Mark has outlined.

In addition, members of geographic groups in the General Assembly exerted pressure on some of the member states to drop out of the race so that repressive regimes would not bring discredit to their region or to the Council. We hope that this sort of pressure is sustained in future elections.

Further, as Mark noted, as several notorious human rights violating states—Iran and Venezuela amongst them—were defeated even though they chose to run. Regrettably, however, some serious human rights violators, such as Cuba and China, were elected to the Human Rights Council. It is deeply unfortunate. Taken as a whole, the record of the Human Rights Council members, however, is something of an improvement over the Commission.

In the Commission, 28 percent of the members were ranked as “not free” in Freedom House’s annual rankings of political and civil liberties around the world. At the Council, that percentage has dropped to just below 20 percent. It is an improvement, but more needs to be done.

As you know, the U.S. chose not to run. We did so for principled reasons having decided that given our “no vote” on the resolution creating the Council we should not run for membership in the body. Also, we felt that there were strong candidates in our regional group that would uphold the values that we would have also promoted on the Council.

As I stated earlier, the other major U.S. priority for the Council was maintaining a strong mandate for its action. Our highest objective was to preserve the ability to address violations of human rights in individual nations.

One of the Council’s essential tools in this regard is the ability to offer technical assistance. In urging human rights situations, the Council may prevent a crisis by offering advisory services, technical assistance and capacity-building to states. Such assistance can address country situations through dialogue and cooperation with the affected parties. The United States is in the process of conferring closely and actively with partners on the Council to identify such situations where such aid would be useful.

Another tool that this Council has is the ability to call special sessions to discuss urgent human rights problems. The United States supported the concept of the special sessions in negotiations to create the Council, but argued, as Mark personally did, that the support of the majority of members should be required. The resolution, however, set out a requirement for the support of only one-third of the membership of the Council.

Regrettably, the Human Rights Council has successfully called for two special sessions. The first took place July 5 and 6, and addressed the human rights situation in the occupied Palestinian ter-



ritories. The United States opposed the holding of this session which focused only on Israel while ignoring Hamas's and Syria's role and also overlooking the failure of the Palestinian Authority Government to dismantle terrorist infrastructure.

The second special session occurred on August 11 on the situation in Lebanon. The United States also strongly opposed the holding of this session and the resulting unbalanced Human Rights Council resolution that focused only on the actions of Israel and ignored the actions of the Hezbollah that gave rise to the conflict. We have made clear to the countries that voted for the resolutions our serious concerns.

We believe that the Human Rights Council must exercise its responsibility to promote and protect human rights evenhandedly and globally. The decisions to hold these two special sessions and the imbalanced resolutions that they adopted were regrettable. If used properly to address egregious human rights violations, however, the United States firmly believes that the special session mechanism can be a valuable tool in the promotion and protection of human rights. We are prepared to support calls for future special sessions where there are serious and emerging human rights abuses and we are actively discussing possibilities for such action with like-minded countries.

Let me now describe one of the Council's most important tools for use when a country refuses to cooperate with the Council and the international community. In such cases the Council retains the option of condemnatory resolutions. Such resolutions address egregious violations of rights and exhort states to make immediate reforms to remedy violations. Condemnatory resolutions by the Commission in the past have assigned special rapporteurs to monitor situations and report back to the Council. Future Council resolutions could and should contain similar mechanisms to address abuses.

The United States very much supports resolutions that call to account the worst violators of the universally accepted human rights and fundamental freedoms of their people, especially those that refuse to cooperate with the Council and the international community. We are actively conferring with friends on the Council about when to pursue condemnatory resolutions.

We have held dozens of meetings with like-minded counterparts to press hard for calling to account the most egregious human rights violators. In Geneva just last week I held a series of meetings to press on this issue. Mark was in Geneva in April, May and July, and held similar meetings.

Mr. Chairman, as Secretary Rice has said, the United States is committed to making the UN Human Rights Council strong and effective. This is essential because there are still repressive and blood-thirsty regimes that violate the fundamental human rights of their people and refuse the international community's help. The UN must be able to hold a mirror up to them and speak truth to power.

The mandate of this Council is clearly presented in its founding resolution text where UN member states decided, "that the Council should address situations of violations of human rights, including



gross and systemic violations and make recommendations thereon.” We are working hard in a variety of ways to achieve that goal.

The coming sessions and decisions of the Council will demonstrate whether the new body has the ability and more importantly, the political will to protect and promote human rights more effectively and fairly than its predecessor. The United States remains committed to making the Council strong and effective. The cause for freedom, democracy, and the victims of human rights abuses globally require our best effort.

In the weeks and months ahead, I look forward to continuing to consult with the Members of this Committee, with your staffs, with our partners in the NGO community, and in the international community to undertake to make sure that the Human Rights Council executes its duties well and effectively.

Thank you for your attention, and I would be happy to answer any questions, I am sure, along with my colleague.

[The prepared statement of Ms. Barks-Ruggles follows:]

PREPARED STATEMENT OF MS. ERICA BARKS-RUGGLES, DEPUTY ASSISTANT SECRETARY, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEPARTMENT OF STATE

Chairman Smith and members of the Committee: Thank you for your support for a strong, credible and capable UN Human Rights Council, and thank you for making this hearing a priority in the Committee’s September schedule. We have been pleased to brief the Committee regularly on events at the Council, but recognize that a public hearing of this type sends an important signal that the U.S. Congress wants the UN Human Rights Council to function as a protector of human rights.

Following the creation of the Council, Secretary Rice stated, “The United States remains committed to supporting the United Nations’ historic mission to promote and protect the human rights of all the world’s citizens.” She continued, “The United States will work cooperatively with other Member States to make the new UN Human Rights Council strong and effective. In particular, we must work to ensure that countries elected to the Council uphold the highest standards of human rights.”

I am pleased to join my colleague Mark Lagon, from the International Organizations—or IO—bureau at this hearing. My bureau, Democracy Human Rights and Labor, or DRL, and IO work very closely and collaboratively together every day to coordinate U.S. human rights and democracy policy in multilateral organizations, so it feels very natural to be here together today. As he discussed, the United States had two major objectives for reform of the deeply discredited Commission on Human Rights. The first was to improve the membership. The second was to preserve the critical parts of its mandate, including its ability to review egregious violations of human rights and make recommendations to address those violations as needed. We worked hard for many months to create a worthy Human Rights Council, with a stronger membership and solid mandate. Mark has outlined for you the results of that effort. Disappointed as we were we believed then, and still believe, that it is worthy of our history and the value we place on supporting human rights around the world that we work hard to make this Council a strong, capable and credible body.

There is much work to be done if the new Council is to become what we hope for—an improvement over its predecessor. The decisions of the new Human Rights Council to date have been disappointing. But we still have hope that the new Council can in fact be improved. We believe that the cause of freedom, democracy, and human rights defenders around the globe requires our best effort. Therefore, the United States remains committed to working with allies to improve the body.

#### MEMBERSHIP

The record of the Human Rights Council is mixed with regard to the first goal of improving the membership. Some notorious serious human rights violators such as Sudan, Iran, and Zimbabwe are not members; but Cuba has retained its seat and enjoys a disproportionately influential role in the UN’s chief human rights body. And, as my colleague noted, the allocation of seats by region changed in the Council as compared to the Commission. There was a reduction in Western European and



Other Group and Latin American seats. Meanwhile, over half of the HRC seats are occupied by African, Asian and Eastern European members, regions with mixed records on human rights.

Mark has already noted that the elections for those seats were different than they had been in the Commission, with competitive, rather than agreed, slates of candidates from regional groups. The resolution creating the Council also stated that countries should “take into account” a candidate’s human rights record when voting for its membership. Countries thus began—for the first time in the history of the UN—to support their candidacies for the new body by making public pledges about how they would enforce human rights obligations and standards, both at home and abroad. By the day of the vote, most candidate countries had made public pledges, agreeing explicitly that their record should be measured not only by the obligations they had undertaken in international treaties, but also in these pledges. But making pledges is not enough—what counts is implementing them. We acknowledge the significance of this step, but the follow-up on these pledges—both in terms of what is delivered, and how those governments that do not measure up will be judged by their fellow members—will determine whether this is more than lip service. We will be watching closely.

A number of countries also chose NOT to run for election to the Council. When the elections were held in 2006 to choose the states that would serve on the Council, a number of members of the Commission on Human Rights opted out of the race. Among the nations that did not run was, as you know, the United States. We did so for principled reasons, having decided that, given our decision to vote “no” on the resolution creating the Council, we should not turn around and run for membership on the body. Further, there were many strong candidates from our regional group running and we felt they should be given the opportunity to serve.

At the same time, some countries with very troubling human rights records, such as Egypt, Eritrea, Guinea, Zimbabwe and—most notably—Sudan, decided not to run for re-election. Mr. Chairman, I doubt that they did so for the reason that the U.S. chose not to run: due to reservations about the legitimacy of the new body. Rather, we believe these countries chose not to run because they had doubts that they could be elected to the new, somewhat smaller and more selective body. They may also have preferred not to subject themselves to the scrutiny that they would receive under the new Universal Periodic Review. The resolution creating the Council stipulated that Council members would be subjected to that review before all others.

In addition, members of geographic groups in the General Assembly exerted pressure on some States to drop out of the race. This was due to another reform adopted for the Council—the fact that members would be elected individually, rather than as part of regional slates. Member states urged repressive regimes not to bring discredit to their regions by running for the Council. Hopefully this sort of pressure will be sustained in future elections, and not just the historic first one.

Regrettably, and despite all the changes I have outlined, some notorious human rights violators such as Cuba and China were still elected to the Human Rights Council. That is deeply unfortunate. But it is also true that the membership in the Human Rights Council improved in some respects on that which had prevailed on the Commission on Human Rights. In the Commission, a full 28% of the members were ranked at “not free” in Freedom House’s annual rankings of political and civil liberties around the world. At the Council, that percentage had dropped to less than 20% of the total.

In analyzing whether we succeeded in our objective of improving the membership of the UN’s premier human rights body, however, it is also important to review not just the individual records of its members, but also their collective aspirations and actions. And this is where we run into serious questions about the record of the Human Rights Council thus far. As Mark and I have described, more states from regions with mixed human rights records were elected to the Council. This increase has proven to be significant in the actions taken by the Council since its inauguration in June. In the new HRC only 16 members of the Human Rights Council are needed to call special sessions. Those 16 votes were easily mustered this summer as the Council called successfully for two special sessions on Israel in the first eight weeks of the Council’s existence. I will address our very serious concerns about those special sessions in a moment, as part of the discussion about the second important priority the United States established for the new Human Rights Council: giving it a strong mandate.

#### MANDATE

Our highest priority for the mandate of the new Council was to preserve the ability to address violations of human rights in individual nations—particularly those



with the most severe violations. The resolution creating the Council establishes the body's authority to address violations in individual nations, and charges the Council with making recommendations on how to address such violations. The resolution does not go into great specifics about exactly *how* the Council can address violations, so I will describe the tools the United States considers essential in this effort.

One of the Council's essential tools is the ability to offer technical assistance. The Council has the authority to take action to address emerging human rights situations before they become crises, so in such circumstances, it may offer advisory services, technical assistance or capacity building to states. Such assistance can address country situations through dialogue and cooperation with the affected parties. The United States believes that this type of Council action complements the more confrontational option of condemnatory resolutions, and strongly supports cooperative assistance by the Council to states as well. After all, it is better to address human rights problems as they are beginning to emerge rather than when there is a full-blown crisis. As with the condemnatory resolutions, the United States is conferring closely and actively with its partners on the Council to identify situations where such action could be useful.

And, as we have discussed, another tool that this Council has is the ability to call special sessions to discuss emerging human rights situations. The United States supported the concept of special sessions in the negotiation to create the Council, but argued that the support of a majority of Council members should be required. The resolution, however, set out a requirement for the support of only one-third of Council members for such sessions.

While discussing the Council's membership, I described how members with mixed human rights records have increased their representation on the Council—have used and abused their numbers to call successfully for two separate special sessions. The first, which took place on July 5 and 6, was called to address the human rights situation in the Occupied Palestinian Territories. The United States did not support the holding of this session, which focused only on Israel while it ignored the role of Hamas and Syria in creating the situation, and also failed to note the failure of the Palestinian Authority government to denounce terrorism.

The second special session occurred on August 11, on the situation in Lebanon. This Special Session was unhelpful and could have undermined the Security Council's concurrent efforts to reach a lasting peace, taking into account the views of both Lebanon and Israel. The United States strongly opposed the unbalanced approach taken by the Council in its resolution on focusing only on actions by Israel, and ignoring the actions by Hezbollah that gave rise to the conflict. Fortunately, in New York, the Security Council was able to finalize its resolution, establishing the current ceasefire and laying the path for a return to peace in the region. We were deeply disappointed that, in Geneva, many Human Rights Council members chose to vote in favor of the OIC-sponsored resolution, and we have made our concerns very clear to them.

The United States remains seriously concerned about the Human Rights Council's unnecessary focus on Israel. We believe the Human Rights Council must exercise its responsibility to promote and protect human rights even-handedly. The decisions to hold these two special sessions and the imbalanced resolutions adopted there were regrettable. However, the United States firmly believes that the special sessions mechanism—if used properly to address egregious cases—should and can be a valuable tool in the promotion and protection of human rights. We are prepared to support calls for future special sessions on countries where there are serious and emerging human rights abuses, and are actively discussing possibilities with like-minded countries.

Finally, when a country refuses to cooperate with the Council and the international community, the Council retains the option of condemnatory resolutions. One of the most important vehicles for addressing egregious violations of rights is a UN resolution outlining the problems, and exhorting the state to make immediate reforms to prevent or remedy the violations. Condemnatory resolutions passed by the former Commission assigned Special Rapporteurs or other "special procedures" to monitor the situation and report back to the UN about developments. Deputy Assistant Secretary Lagon has described U.S. priorities in the review of such mandates that the Council inherited from the Commission. The United States very much supports resolutions that call to account the worst violators of the universally accepted human rights and fundamental freedoms of their people, especially those that refuse to cooperate with the Council.

As an observer at the Council, the United States is actively conferring with friends who are members about when to pursue condemnatory resolutions directed at violating states. Over the last few months, we have held dozens of meetings with counterparts in like-minded countries to press hard for calling to account those



countries that refuse to cooperate with the international community. In Geneva last week, I held a series of bilateral and regional group meetings to press this issue. Mark was in Geneva in April, May, and July and held similar meetings. More senior officials of the Department are, of course, also regularly involved in such discussions with their counterparts. The result of these discussions is an emerging strategy of like-minded countries to maintain intense scrutiny on the worst violators of human rights and ensure that they are held to account.

#### CONCLUSION

Mr. Chairman, as Secretary Rice has said, the United States is committed to make the new UN Human Rights Council strong and effective. This is essential because there are still repressive and, sadly, bloodthirsty regimes that violate the fundamental human rights of their people and refuse the international community's help. The UN must be able to hold up a mirror to them and "speak truth to power." The mandate of the Council is clearly presented in its founding resolution text where UN Member States decided ". . . that the Council should address situations of violations of human rights, including gross and systematic violations." Making that lofty statement a reality is the primary objective of U.S. policy at the UN Human Rights Council, and we are working hard in a variety of ways to achieve that goal.

The coming sessions and decisions of the Council will demonstrate whether the new body has the ability—and more importantly—the political will to protect and promote human rights more effectively and fairly than its predecessor. The United States remains committed to work cooperatively with its member states to make the Council as strong and effective as it can be. Again, we believe that the cause of freedom, democracy, and human rights defenders around the globe requires our best effort.

In the weeks and months ahead, I look forward to consulting further with the Committee, to work cooperatively with its Members, as well as with civil society, and with our international partners to press the Human Rights Council to undertake its duties well. The United States will not diminish our standards in any way as we pursue this important objective. Thank you, once again, for your attention to the UN Human Rights Council.

Mr. SMITH. Thank you very much for your testimony, and both of you for your fine work on behalf of our nation, particularly as it relates to these issues.

Let me begin with some questions, first on the pledges. I have read the responses of several of the countries as to what their pledges were with special emphasis on two that got elected, China and Cuba. I know that at the upcoming September 18 to October 6 session there will be working groups reporting on how this Universal Periodic Review will unfold. I don't know if their work has been completed, but I know we have been a part of that.

My question is when does a country like China or Cuba or some other egregious violator—North Korea, although they are not on the Council—get reviewed? Will it be 3 years down the line? Will it be 6 years down the line because they are allowed, obviously, two consecutive terms of office? To me, that is very important because delay is denial, especially to the victims in a place like China.

And I would just note parenthetically that this Subcommittee has been roundly critical, as has the Administration and human rights watchdog groups, on China's barbaric behavior in a myriad of areas when it comes to human rights.

Recently, I filed a petition along with Ben Cardin and with the AFL-CIO on the violation of workers' rights in China. There are no unions, people are not paid, workers earn 10–50 cents per hour, and the use of gulag, or allowed day labor, is widespread and pervasive. Child labor is pervasive. China is a country of particular concern because of its abuse of religious freedom. I know many people in prison today who are pastors, one of whom I know quite well



and met with when I was in China, Bishop Chu of Baldine Province. He may have even been executed, but he was last sighted in prison.

We know that the forced abortion policy has unbelievable pain and agony upon the women of China especially; that there is missing as many as 100 million girls. A genocide is occurring because one child is permitted per family and girls have been eliminated systematically in China. We know the Uigurs have been picked out as the Tibetan Buddhists for particularly harsh mistreatment.

We know that they are using the Internet to crack down on religious and political dissidents, people who just want to advocate democracy. We recently had a day-long hearing on the Global Online Freedom Act, and especially as it relates to China. There are 35,000 or 36,000 estimated secret police in China combing the Internet waves to try to discover anyone who puts "democracy" or some other forbidden word into their e-mail or Internet posting. Yet they are a country in good standing. That to me is the height of hypocrisy. Their pledge was very, very soft and nonspecific.

A Universal Periodic Review has to occur. When, and what will this review look like? When will countries like China be brought forth and really looked at?

Again, as I mentioned in my opening, you and I have read Manfred Nowak's statement on China. It is an indictment on the use of torture in the PRC. Yet they sit on the Council—it is mind boggling.

Ms. BARKS-RUGGLES. Mr. Chairman, thank you. I would like to start by addressing a few China-specific questions and then turn to Mark to talk about the Universal Periodic Review mechanism.

As you have pointed out, there are serious and continuing human rights abuses in China. There are a number of ways that we are trying to address those issues in the Administration, including the Assistant Secretary, my boss, Barry Longren for Democracy, Human Rights and Labor, who has gone to China to have discussions with them on human rights and to talk to them about what we expect them to do before we are able to resume the human rights dialogue that has been suspended for a number of years because of some of the egregious problems that you yourself just pointed out.

We have given them in a number of discussions, including at various different levels in our Government up to and including the Secretary of State and the President, a series of steps that we would like them to take in order to resume that dialogue. We have discussed with them specific cases of individual prisoners, and we share your concerns about the need for them to demonstrate improvement so that we can then begin engaging bilaterally on a serious dialogue with them.

However, we understand that that is not enough and it needs to also be addressed in the international community in the multilateral questions, including through the Human Rights Council. We have talked with a number of our friends on the Council about when we should pursue specific country issues on the Council. Those discussions continue, and part of this is trying to figure out what make sense to address when. Which is first out of the box will be important, but also how to get things through because we want



to make sure that the Council is effective. Those discussions are continuing and I don't want to try and predict when China specifically will be addressed, but part of that also figures into when will they come before the UPR as well.

So I will turn to Mark to address the questions on the Universal Periodic Review.

Mr. LAGON. I, of course, share your moral and policy concern about China being addressed by the international community and by the UN mechanisms.

With regard to the Universal Periodic Review, the idea of the proposed review would be that members of the Human Rights Council would be subject to the review earliest and first. It is designed to answer the question, Who are you to stand in judgment of others? It really does put some pressure on governments that are thinking of running that they might be subject to this review. It might have even led some countries like Sudan and Zimbabwe to think twice about running. It is important that China be among the first.

There was a straw poll, I mean a drawing of straws after the first election to create staggered elections for future years, and so some governments that won in the election got a 1-year seat, a 2-year seat, and a 3-year seat. It is the unfortunate outcome that a couple of governments like Poland and the Czech Republic only got 1 year, and a couple of governments like China and Cuba managed to get 3 years by that drawing of straws.

That should not be an excuse for dictatorial governments to come later. It is important that all governments be treated that and that it not only be the freedom-loving liberal societies of the West that are treated to the Universal Periodic Review first.

Mr. SMITH. Let me just ask you a question in regards to definitions. When any of us write a law or put a proposal forward, there is always a definition page which defines terms so that there is no ambiguity as to what we mean.

What about the ambiguity about human rights and what the Human Rights Council will construe to be human rights?

I note that Louise Arbour, in a statement, made a point of pointing out that she believes that the most serious human rights violation that we must confront is poverty. Now, I would generally put that on the humanitarian side of things and believe that we need to aggressively try to mitigate poverty anywhere and everywhere we see it, but if it becomes a place holder that crowds out other human rights abuses, I think we have a problem.

I remember in the early days when I first got elected 26 years ago, we used to meet with the Soviets and talk about religious freedom and again talking about the crack down on Refusniks and Soviet Jews and Pentacostals and others. They would immediately go to a discussion about homelessness in America, and you know, it was like, okay, we address that, but that is not basically what the definition of human rights is all about.

So definitions again, I think it is all important that we know exactly what we are talking about, which is why the treaties are so important as compared to some conferences and the like, and I have been at many of those conferences. I would just finally say, very often the text of the conference document is written in ad-



vance. It always is written in advance. Some of the questionable language is bracketed. They work on the bracketed, and, frankly, it is a process of wearing people out over the course of a week to get a consensus document and everyone goes home and say we did a great thing.

That is hardly a method or methodology that leads to human rights that then need to be guarded and fought for. It is very, very, I think, slippery in the way some of those conferences are run.

So I would ask you: Definition, how do we get to a definition, and will the working groups address that?

Mr. LAGON. The issue of economic, social and cultural rights has been with us for awhile. We embrace the Universal Declaration on Human Rights even though it cites economic, social and cultural rights. But it has been our strong view that the character of those ideas is very different from political and civil rights. They are things protected. They are negative, bad outcomes of freedoms diminished that are protected in the concept of political and civil liberties.

Economic, social and cultural rights, in our view, should not be subject to judicial enforcement. We think that properly vested governments accountable to their people, representing the consent of the government should provide for economic goods, should look out for the housing, you know, the diminution of hunger of their people, but these are not rights that the UN should be speaking to of the same character.

These discussions will clearly continue, and Arbour has fed it with her comment about this. It is true that this body, with the increased number of African and Asian group members, will focus on economic and social and cultural rights. There is the definitional question, and important one. Additionally, there is the tactic used by some developing countries, and notably even some democratic governments within the developing world, to turn the discussion away from condemnatory resolutions that relate to political and civil liberties by focusing on questions of economic haves and have nots within countries, and economic haves and have nots within the world.

I will just say one comment about conferences. We agree with you fervently that conferences and their outcome documents, their communiqués do not have the legal weight within the international system that treaties do. This has been a problem that we have faced for some time in the General Assembly, in the old Commission on Human Rights, is citing conferences, notably conferences like the Durbin Conference on Racism that turned out to be a manifestation of racism and hate more than something to fight it, and yet we will continue to vigilantly fight inappropriate references that give it equal weight to treaties or instruments within the UN system.

Mr. SMITH. Chairman Rohrabacher.

Mr. ROHRABACHER. Let us see, we have got now only 20 percent of the members of the body that will be passing judgments on human rights, only 20 percent of them are human rights abusers themselves. China and Cuba are still part of this body. I would suggest that while the United Nations and while this Council still has some value, and we should be at least utilizing a forum that



exists, I would hope that we also caution our fellow Americans and others around the world not to place their faith in bodies that are composed 20 percent of people who should be condemned by that body.

Chairman Smith and I have for many years pointed out the major human rights abuses in China. Yet our Government, including this Administration, continues the policies that assist American businessmen to invest in China. We still have guaranteed loans of people who were going to build factories in China.

And while I commend both of you for an advocacy of a standard and a position, and I understand the moderation that you have, I don't know if I am ever going to be able to come to a hearing like this and be satisfied with my Government, the Government of Thomas Jefferson and the Government of values that we supposedly champion in the world. You have said the right thing today. You are trying to go in the right direction. You are voices not only of moderation but also of trying to accomplish what you can accomplish.

So my only comments are what I just made, and I would just say good luck to you both, and do your very best. Make us proud to be Americans. We are not proud if America is just a country of people who came from every corner of the world in order to just make money. We came here also to be a shining light of example of the type of standards of decency and liberty and justice that would hopefully have its impact on the world, not through our involvement in organizations, flawed organizations like the United Nations, but instead as an example to the rest of the world.

So you have got a lot to live up to, and you are trying to do a good job, so good luck to you.

Mr. SMITH. Mr. Fortenberry.

Mr. FORTENBERRY. That was a very powerful statement, Mr. Chairman, Chairman Rohrabacher, and I appreciate it because he is hinting at something that probably is beyond the framework of today's discussion about how on one side of our offices we promote policies that further economic relationships, and on the other side we condemn and try to uphold the fundamentals of human dignity around the world. When those two virtues, when those two policies are at an impasse we just sort of do them both, and how to reconcile that is an important policy discussion that I think needs to take place. Thank you for raising it.

Chairman Smith actually addressed the two questions that I had for both of you, but I think it would be worthwhile going back and unpacking it a little bit further. Secretary Lagon, if you could go back to the Universal Periodic Review and just talk about the possibility of that being implemented. You seem to be indicating that this is a United States initiative. Who are our allies in this regard or is this process already underway through a large movement among Council members, among the general assembly, and what is its possibility of implementation?

I think it is reasonable, it perhaps is the only enforcement mechanism that has any teeth so that the new Council simply doesn't become just a device for inflammatory rhetoric, and then we move on to other things.



I will stop there. I have a second question though I would like to ask you both.

Mr. LAGON. And some of your respective comments are so rich that we may want to comment, although you are right, that bigger question about those two virtues may be for some other hearing.

On the Universal Periodic Review, I would not describe us from the outset as a champion of the Universal Periodic Review because we were skeptical, we were worried that it would be used to divert attention from condemnatory resolutions, an excuse used to suggest, well, we haven't done the periodic review yet so you can't have a resolution on a particular dictatorial country.

However, it has great potential to add to the mechanisms of the human rights machinery of the UN if done right. We think it is important that states take some ownership of it, that there be responsibility by states, but it should not be allowed to be just the creature of a politicized debate or, frankly, the soft discussion between different developing countries or between countries with dictatorial governments to go easy on the record of their colleagues. It needs to be a serious effort to look at the record of certain countries without creating a heavy bureaucratized effort, which is always the sin of the UN is to create something too bureaucratized.

We mentioned that we are very concerned that technical assistance to countries in transition be offered, not only the important condemnatory resolutions to those particularly recalcitrant blood-thirsty and repressive governments, but governments in transition seeking technical assistance. We hope that this does not—this Universal Periodic Review does not become so bureaucratic that the Office of the High Commissioner and the whole human rights apparatus focuses on that and takes attention away from helping countries in the field so that those marginalized people are not assisted.

Mr. FORTENBERRY. Well, perhaps one suggestion there could be that somebody who is graded or scored, and this is related to my second question as well, might be offered the opportunity to be moved into another category prior to the public discourse that takes place or the condemnation that takes place if they agree to certain types of technical assistance that will help correct those measures. Just an idea for your consideration.

Mr. LAGON. There are scores that are taken account of with the Millennium Challenge Account, and I look to our experts on the second panel. Brett Schaefer is associated with one score, the Index of Economic Freedom, and Jennifer Windsor would be excellent on the annual survey.

Mr. FORTENBERRY. This would be a good segue to the second part of the question which the Chairman has also touched upon. In your testimony you suggested that the United States very much supports resolutions that call to account the worst violators of "universally accepted human rights and fundamental freedoms of their people."

Given the fluidity of the understanding of what that means, now talking about a score card, and talking about diversion into issues that might fall under the desired fruits of a stabilized society that has enshrined basic human rights, where is this going to come from? Is the benchmark document still the Universal Declaration



on Human Rights, or again, is this process so fluid that it is very, very difficult to find an objective standard that talks about what I certainly believe, and I think most of us do believe, the immutable rights that are found in the very basic nature of persons as they lead to civil society and the other protected rights that we enjoy and some others around the world enjoy as well?

Ms. BARKS-RUGGLES. Thank you, Mr. Representative. We believe that the Universal Declaration of Human Rights remains an absolutely critical document to the upholding of a universal standard of individual freedoms, protections, and liberties. These are immutable rights for all individuals and we believe that governments that have abused that standard need to be brought to account.

The new Council offers a number of new mechanisms, but does not have a diminution of the condemnatory resolution mechanism from the Commission. There are ways of getting at countries that are serial users, serious human rights abusers, and those who refuse to cooperate with the international community.

As you have suggested, when recommended they refuse to cooperate, whether that is with rapporteurs or whether technical assistance. There could be country-specific condemnatory resolutions, and we believe that that is an important mechanism for the Council to preserve and maintain, and that it is an important quiver or air/wind quiver of the Council.

We believe that also the Universal Periodic Review could lead towards, if certain steps are recommended and the country refuses to take those steps, and refuses to cooperate with technical assistance, that again that could lead toward a more condemnatory stance by the Council.

We believe also that there are places through special sessions where if there is an emerging situation, such as was faced in 1994 in Rwanda where it is a serious and emerging threat, that with this new Council meeting not once for 6 weeks, and if you happen to run into a genocide in April, oh, sorry, we won't address that until next March, we now have the ability to call a special session to address that issue right then, right there, and to recommend action, whether that is referring the matter to the Security Council if that is appropriate for action there, or whether it is taking a condemnatory resolution or other. There is a whole series of steps that could be taken.

Likewise, in situations where countries are emerging from conflict, the recent situation with Liberia may be a case in point, where a country is taking steps but struggling to improve what had been a dire and very serious human rights situation, where a special session could be taken in a future resolution of a conflict to offer technical assistance, to help them bridge the gaps, if you will, especially in cases where there are serious resource gaps for those countries.

So there are a number of different mechanisms that would be available to this Council to get at these questions, and it really comes back to the question I raised in my testimony of whether this Council has the political will to use all those mechanisms to try and actually implement improvements on the ground, and that is where really the gold standard is going to be: Is this Council able to actually make a difference on the ground?



Mr. FORTENBERRY. One quick follow up, Mr. Chairman.

I would like to see if you could provide the other measurements that you said that are out there, looking at the Universal Declaration of Human Rights as kind of a core document, but you mentioned there are other measures floating out there. That would be interesting to me if you could provide that, I would appreciate it.

Secondly, one of you suggested in your testimony that the Council's proceedings be moved from Geneva and from the comfortable surroundings of Geneva into the field. I think that is very astute. What if this perhaps moved around or field offices, if you were, were held in various places? I think that is a very good recommendation, very practical.

Ms. BARKS-RUGGLES. We will be happy to provide you with a list of the various different measures that are out there. I would recommend to you, of course, my bureau's human rights report—

Mr. FORTENBERRY. Sure.

Ms. BARKS-RUGGLES [continuing]. Which we do on an annual basis, and also the *Report on International Religious Freedom*, which is also done by the State Department, as well as the *Trafficking in Persons Report*, all of which feed into very basic and fundamental human rights. But we would be happy to provide you with—we have great little CD-ROMs of those, and we also be happy to provide you with a list of other measures that we look at when we are looking at different countries' records.

Mr. FORTENBERRY. I am greatly confident in your work, don't get me wrong. I am looking at other possible notions that are out there that are challenging again what we consider to be immutable rights, so I would appreciate that. Thank you.

Mr. LAGON. I just wanted to clarify my point about the field. My main point was that, as this Office of the High Commissioner for Human Rights enlarges, we want to make sure that it is not just a Euro-centric think tank that when the Office of the High Commissioner is doing its technical assistance, it moves its resources and personnel out to its field offices rather than being only focused at the center.

Mr. FORTENBERRY. Thank you.

Mr. LAGON. Thank you for your comments.

Mr. SMITH. Let me conclude with some final questions. Perhaps my colleagues have a few additional ones.

But what are we doing now with the OIC in reference to the possibility that they will call for an additional special session on Israel? What likely will be the agenda of rapporteurs on September 18 and October 6? Will there be a focus on Darfur where you have the Khartoum Government thumbing his nose at the international community and a UN peacekeeping force, and now as we are reading every day, troop deployments into Darfur, more slaughters, more rapes of individuals who are innocent and certainly don't deserve that?

I mean, if anything cries out for immediate UN Human Rights Council action, it would seem to me that Darfur should be first out of the blocks on September 18, if not, why not?

And let me just ask you with regards to the resolution said that the work and the functioning of the Council could be reviewed within 5 years. Within doesn't mean that 5 years. Obviously it



means anytime before that. I would hope that we would be looking to seriously go back and look at what was missed and the General Assembly should be honest enough. Anytime we pass a law we go back a year later. If something was missing, some gaping hole, we take a second look, reform provisions go forward hopefully to rectify that mistake or that overlooking of a provision that should have been in there. I would hope that we would be looking to do that very, very soon to try to correct some of these inequities.

Finally, Mark Wallace, our U.S. representative, had called for the elimination of the Sub-Commission for the Promotion and Protection of Human Rights and its subsidiary bodies last spring because of its disregard of directives and guidance from its parent body, and because it reflected, according to our position, the U.S. position, the views mostly of the 24 experts as opposed to what is basically settled human rights concern. So you get people moonlighting, writing reports going into tangents that is just their own personal view on something, and therefore it has the view of the UN body. How do they fit into all of this, the Sub-Commission? Where does it fit with the new Council?

Ms. BARKS-RUGGLES. Mr. Chairman, thank you. I will try and address the first two of your questions and then turn to Mark for the second two structural questions.

Mr. SMITH. Sure.

Ms. BARKS-RUGGLES. As regards to the OIC. The OIC is not a monolith. Seventeen of the 47 members of the Council are members of the OIC. This means that they have more than one-third of the membership, and that they are able to call at will special sessions. We are realistic about what that means as far as the chances that there will be future Israel-focused special sessions.

We, however, have seen that not all members of the OIC have voted consistently throughout the series of resolutions, there were four, two in the first session and then one each in each of the special sessions on these resolutions against Israel, and we believe that there is not yet a cemented position by that group.

Each country there has individual national interests, and we will continue to work with a number of those countries, including importantly some of those countries which are very strong democracies, to look at what is in their national interests and their own interests in having a strong, capable human rights Council that is actually able to work with them to address serious human rights abuses in their own regions.

When I was out in Geneva last week I had a couple of meetings with a number of those countries, and I think there is reason to hope that we can work with some of them to get them to understand that the need for balance and globally—a global viewpoint of this human rights counsel in the future.

On Sudan and Darfur, we could not agree with you more that there is a very, very serious and ongoing human rights problem. In Darfur, as you know, this Administration has been leading the world in calling what was happening there genocide, and calling attention to it, and focusing very, very serious attention not only bilaterally but by the entire international community on the situation there.



Our Assistant Secretary for African Affairs, Gendi Fraser, was in Khartoum last week discussing the situation there with the government and trying to get them to address some of these issues. We will work with our colleagues throughout the government to decide when it is appropriate to bring these issues to various bodies in the UN system.

There is not only the UN Human Rights Council but obviously the Security Council is also engaged in this matter, and we want to make sure that we are addressing all pieces and parts: The security part of this but also the human rights part of this conflict as we move forward, and the obvious problem that is caused by the AU peacekeepers there, having their mandate run out soon, and the inability of the UN peacekeepers to go in behind is of first and foremost concern for our Government, and we remain very, very engaged on that, and obviously that will have implications on the human rights situation. But we will also be remaining engaged on the very serious human rights situation that is there.

Mr. SMITH. I appreciate it. Just briefly again on Darfur. Will there be an attempt made at the upcoming Human Rights Council to put pressure on Khartoum to allow United Nations peacekeepers in?

Ms. BARKS-RUGGLES. To answer—

Mr. SMITH. It seems to me that right now they have a window of opportunity to do incredible mischief and killing. Their troops are being deployed. I don't know how many. I have seen 20,000, 30,000, 10,000, I don't know what the exact number is. At least we have an additional area of engagement with the UN Human Rights Council as observers. Could we make that request?

Ms. BARKS-RUGGLES. It is going to have to—we are going to have to see how things evolve, quite frankly, in the next 2 weeks as we go forward. We are obviously at a critical moment here, and we will see how things evolve in the next 2 weeks to see if we are able to move forward with something in the Security Council and then to see how that meshes with something in the Human Rights Council.

I don't want to say definitively yes or no because I don't think we know right now, and we will have to see how things evolve in the next 2 weeks, but we have been working very closely. I had a discussion just this morning with Gendi Fraser about this, to try and see how we can best make this situation stay on the front burner of the international agenda because it is absolutely critical that the international community, not just the United States and not just our partners who have been working very hard for peace in Darfur engage, but the entire international community, including Sudan's neighbors.

Importantly, I think we also need to look at the OIC and some of the member states there. I will be going out to Egypt next week and we will be raising this with the Government of Egypt as well.

Mr. LAGON. I had a couple of questions from Chairman Smith I wanted to respond to. Did you want to follow up with Erica?

Mr. ROHRABACHER. Go ahead.

Mr. LAGON. Okay. I wanted to respond to your question about the 5-year review and the elimination of the Sub-Commission.

I take your point just as you with legislation refine earlier versions of legislation, like in dealing with the grossly dehuman-



izing phenomenon of trafficking persons, with the reauthorizations having improved, filled holes, dealt with problems. One could look at the problems of the Human Rights Council before the 5-year review. We will look at that option.

Our thought had been that the 5-year point will be the juncture set out in the resolution creating the Human Rights Council to decide whether it would become a principal body of the UN. Our main consideration is to see what the record is of the Human Rights Council. We will not allow it to be a self-fulfilling prophecy that we consider the Council problematic and not better than the Commission on Human Rights, but that was the main test that was designed for 5 years from now, but there may be some steps the General Assembly could take in the meantime.

With regard to the Sub-Commission, we have indeed, both as a budgetary matter and a matter of review of all UN programs to see which are duplicative, stated in New York, as Ambassador Wallace did, that the Sub-Commission should be eliminated, and vigorously in the discussions of mandates in Geneva under the auspices of the Human Rights Council, suggested that the current Sub-Commission that still exists despite the fact that the Commission on Human Rights is gone is completely unmoored.

There is not only the problem that you cite some experts on the committee having gone far afield from the intended mandates of the principal body, but there are members of that committee who are ostensibly independent experts, but are really the agents, the instruments of dictatorial governments that they are associated with.

Our view is that there should be no successor body, that the old job of the Sub-Commission was to create norms, and just as Secretary-General Annan and High Commissioner Arbour have said, we should look at implementation.

If there is any successor body of experts, it should only be dealing with implementation questions, some advice on technical assistance that would be most appropriate to help countries, but our first choice in what we are advocating strongly is that the Sub-Commission be eliminated and not replaced.

Mr. SMITH. Dana.

Mr. ROHRABACHER. I would just like to make sure that the record indicates that—I understand the Chairman has a special place in his heart for Israel, as do most Americans, but let me just note, Mr. Chairman, that I think it is absolutely right for this organization, whether you call it a council, Human Rights Council, or if you want to refer to it as, or just us as a people, to hold Israel accountable on the same standard we hold everyone else accountable, and I know it has become almost a gut reaction from us because in the past the hypocrisy and double standards that have been used in order to condemn Israel, you have tyrants condemning Israel for not treating the Palestinians correctly and giving them their political rights.

But at the same time we do have to recognize there has been in this conflict millions of people, Palestinians, who have for decades not enjoyed the political freedoms, liberties that we expect ordinary citizens to have: The right to vote and to determine their own gov-



ernment. Instead they have been held in limbo because Israel itself did not know what it wanted to go with Gaza and the West Bank.

And I think Israel in the last year has made a decision that they cannot have the West Bank and Gaza incorporated into Israel without incorporating billions of Palestinians, which is not what they want to do because that would destroy the nature of what they have set out to do back in 1948, which is essentially have an Israeli/Jewish state that Jews around the world could look to as their homeland.

But just for the record's sake I want to make sure that everyone, at least for this congressman, liberty and justice is one standard, and I would applaud Israel right now for trying to make those moves and make that decision that will permit the Palestinian people in the end to have their own homeland if they choose not to use it as a springboard to attack Israel itself. So we are going through this period.

But we do believe that the Palestinian people have a right to direct their government through consent of the governed, just like everybody else, and some of the criticism in the past of Israel, while hypocritical coming from dictatorships, some of it would have been justified in coming from people who do believe in democracy and human rights for all.

So let us hope that, and in fact, as I say, I think Israel in the last year has made some fundamental decisions, trying to set up Gaza as an example of where the Palestinians, and the West Bank, how some self-government could be brought to bear, and unfortunately, it has been a very rocky road this first year, but let us hope they evolve in the right way.

But I just want to make sure that whoever is reading this transcript around the world understands that we do hold Israel accountable to the same standards as everybody else in terms of human rights, and just thought I would put that in the record.

Mr. SMITH. Will my friend yield briefly?

I do think it should be noted and I will put in the record the two resolutions from the special sessions on July 5 and 6, and August 11. The problem was that the Council was incredibly one-sided and made no mention of Hezbollah, Hamas, Iran or Syria. And if you read their report, it places Israel at fault for everything.

Mr. ROHRABACHER. Excuse me. Is that a fault for the current crisis?

Mr. SMITH. Yes, both crises.

Mr. ROHRABACHER. I am supportive of Israel in the current situation. I think they have done what is right. They were fired upon and they couldn't sit back and have rockets lobbed into Israel. That would be justified.

But I do think that it is not necessary to criticize everybody in order to criticize Israel at the same time. However, in this case you are putting it in the proper context, so I think that is absolutely correct.

Mr. SMITH. In addition to that, my deep concern is that there are human rights violations being committed with impunity all over the world by many of the same players who are sitting as members of good standing on the Human Rights Council. China, Cuba, and Saudi Arabia come to mind. Saudi Arabia being a country of par-



ticular concern because of its egregious violations of religious freedom, to mention just one violation, and yet nothing there. It begs the question because that is what happened, and those of us who would go to Geneva every year to the Human Rights Commission meetings were surprised by the disproportionate amount of angst leveled against the Israelis vis-a-vis the rest of the world.

China, we would have resolutions of no action because they were able to lobby members sitting on that Commission very often with very lucrative contracts and the like. They use trade as a weapon to keep them from joining on with the United States or others in motions to condemn Chinese barbaric actions on human rights.

Even when we got to places like Darfur, there were efforts to lessen the severity of the resolution. These are only words. So what we are asking for is an end to the hypocrisy, and the preoccupation with bashing Israel. As I think Dr. Lagon pointed out, the hate-fest that occurred in Durbin under the auspices of the UN, it was not about tyrants, it was all about hatred and vitriol leveled against Jews and it was anti-Semitic like no other conference probably ever run under the auspices of the UN. So that is the concern, but I appreciate your comments, I really do.

Would anyone else like to comment?

Mr. LAGON. We appreciate your comments on this. You are right, all nations should be subject to scrutiny, all member states of the UN, Israel and the United States included, but what we are concerned about is that when there is a double standard, as Chairman Smith describes, a disproportionate focus on Israel and a focus in the UN human rights machinery that does not advance the likelihood of peace and an outcome of vision that the President has spoken of, of two states living in peace with democratic governance, including the democratic governance of the Palestinian people you refer to.

Mr. SMITH. I want to thank you two distinguished witnesses again for your leadership and for providing us with your insights on the Council today.

Mr. LAGON. Very glad to join you.

Mr. SMITH. I would like to now welcome our second panel beginning with Brett Schaefer who is a Jay Kingham Fellow in International Regulatory Affairs at The Heritage Foundation. As a foreign policy research fellow, Mr. Schaefer covers the United Nations and affiliated organizations to evaluate their performance and effectiveness. He has authored nearly 100 public policy papers, and over 45 book chapters, articles and opinion pieces.

We will then hear from Hillel Neuer who is the Executive Director of UN Watch, a nongovernmental organization based in Geneva, Switzerland. He is a leading commentator on UN human rights reform, appearing on CNN and the BBC. As a former international lawyer, the U.S. District Court of New York cited Mr. Neuer for his superb work in human rights advocacy.

We will then hear from Jennifer Windsor who is the Executive Director of Freedom House and oversees a staff of 100 with numerous offices around the world. Previously Ms. Windsor served for 9 years with USAID where she most recently was a Deputy Assistant Administrator and Director of the Center for Democracy and Gov-



ernance in the Global Bureau. In addition, Ms. Windsor is an adjunct professor at Georgetown University.

Finally, we will hear from Dr. Morton H. Halperin who is the Executive Director for Open Society Policy Center. He works closely with the U.S. policy abroad to promote human rights and support for open societies. Previously Dr. Halperin served as a Senior Director for Democracy at the National Security Council. In addition, Dr. Halperin spent many years with the American Civil Liberties Union.

Mr. Schaefer, if you could begin.

**STATEMENT OF MR. BRETT SCHAEFER, JAY KINGHAM FELLOW IN INTERNATIONAL REGULATORY AFFAIRS, THE HERITAGE FOUNDATION**

Mr. SCHAEFER. Thank you. Mr. Chairman, thank you for providing me with the opportunity to testify on the state of the United Nations' Human Rights Council, and how it compares with its predecessor, the United Nations Commission on Human Rights.

My testimony is a bit long for the time permitted and I will be summarizing my remarks. With permission, I would like my full statement submitted for the record.

Mr. SMITH. Without objection, yours and all of our witnesses will be made a part of the record.

Mr. SCHAEFER. Thank you. Since the very birth of the United Nations, protecting and advancing fundamental human rights has been one of the primary objectives of the organization. The drafters of the UN charter included a pledge by member states to "reaffirm faith and fundamental human rights in the dignity and worth of the human person and in equal rights of men and women." UN treaties such as the Universal Declaration on Human Rights, which the General Assembly passed in 1948, formed the core of international standards for human rights.

Yet the UN's record on promoting fundamental human rights in recent times has been one of failure and inaction. No institution illustrated this failing more than the Commission on Human Rights, which in recent years evolved into a feckless organization that human rights abusers used to block criticism or action to promote human rights. For instance, members with dubious human rights records elected to the Commission in recent years have included Algeria, China, Cuba, Syria, Zimbabwe. Libya served as chairman of the Commission in 2003. Sudan was elected to the Commission in 2004 despite its actions in Darfur.

The Commission has also focused disproportionately on condemning Israel. By contrast, human rights violations in Sudan, China, Cuba and other nations were subject to minimal scrutiny. The disrepute of the Commission grew to the point where even Secretary-General Kofi Annan acknowledged, "We have reached the point at which the Commission's declining credibility has cast a shadow on the reputation of the United Nations system as a whole." The Secretary-General recommended replacing the Commission with a smaller Human Rights Council able to meet when necessary, possessing stronger standards for membership and charged with reviewing the human rights practices of every UN member state.



The first test to see if the Council would surpass the Commission came last fall. The 2005 World Summit outcome document did follow through on the Secretary-General's proposal to replace the Commission with a new Human Rights Council. However, the details of the Council, including its mandate, operations, size, membership, working methods and procedures were left to subsequent negotiation. The results of these negotiations fell considerably short of the proposals by the Secretary-General, nongovernmental organizations, the United States and other countries interested in making the Council more effective than the Commission for discussing and promoting human rights.

For instance, the Council had no criteria for membership aside from geographical representation. Members of the Council are elected by an absolute majority of the General Assembly, not the two-thirds majority sought by the Secretary-General and the United States.

The resolution set a higher bar to suspend a Council member—a vote of two-thirds of the General Assembly—than the simply majority necessary to win a seat.

While the Council is charged with conducting the Universal Periodic Review, the conclusions of the review would not prevent those countries found complacent in human rights violations from participating in the Council.

The Council at 47 members is only marginally smaller than the previous Commission.

These failings led the United States to vote against the Council in the General Assembly, and decide not to run for a seat in 2006, although it announced that it will continue its financial support and consider running in 2007, if the Council proved its merit. Significantly, well-known human rights abusers, such as Burma, China, Cuba, Saudi Arabia, Sudan, Syria, and Zimbabwe, all voted in favor of the new Council.

The second test for the new Council to see if it is going to surpass the standards, admitted rather low standards of the Commission, was the May 9 election process for the Council. The election validated U.S. concerns that the new Council lacked criteria to prevent major human rights abusers from gaining seats.

Prior to the election, candidates offered pledges for their adherence to human rights standards and justifications for the candidacy. These public statements were in many instances absurd in their deviance from historical record. For instance, the Chinese Government pledged that it is “committed to the promotion and protection of human rights and fundamental freedoms of the Chinese people. . . . The National People's Congress has adopted nearly 300 laws and regulations related to the protection of civil and political rights, ensuring complete freedom of the Chinese people in movement, employment, access to information, religious belief, and ways of life.”

Cuba claims that “Either in the area of civil or political rights . . . the Cuban people can show the world with deep modesty, but with full satisfaction and pride, its tremendous achievements.”

These claims obviously are refuted by the State Department's *Country Reports on Human Rights Practices* and also by the exer-



cises and admirable efforts by a number of NGOs focused on human rights issues.

The General Assembly had the opportunity to prevent human rights abuses from gaining seats on the Council, but it did not take advantage of it. Despite promises by a number of nations to vote against human rights abusers, the membership on the Council remains only marginally better than the Commission. The transparently disingenuous nature of their pledges did not keep China or Cuba from winning seats on the Council. These countries were key players in undermining the effectiveness of the Commission and it is very likely that they will continue to perform this role on the Council.

The Council faced the third test in its first session this past June. The session was marked by procedural issues designed to carry on many of the operations of the Commission. For instance, the Council extended the mandates established by the Commission that are carried out by independent human rights experts.

The Council also established a working group to begin to consider how the Universal Periodic Review of human rights performance of all UN member states should operate, how often countries should be reviewed, and where to begin the reviews. This modest action was very disappointing. The Universal Periodic Review process was considered the most important achievement that would keep the Council from following in the footsteps and repeating the worst weaknesses of the Commission. It remains unknown whether the system that is ultimately established will conduct its assessments of human rights practices with the frequency and frankness that will make the Council a true improvement over the Commission.

Similarly, it remains uncertain as to what extent the mandates and rapporteurs will be scrutinized or if the Council will undertake to tighten the mandates.

But the singular failure of the first Council session was its treatment of Israel. On this subject, the Council proved itself to be just as vulnerable to politization and selective judgment as the Commission. In an extended *deja vu* experience the Council, led by the Organization of the Islamic Conference, repeatedly singled out Israel for censure despite the efforts of a number of countries on the Council.

I will wrap up my remarks with a few suggestions, and I will welcome questions from the Committee.

The hope that the new Human Rights Council would rectify the poor record of the Commission has thus far proven illusory. While the Council has the potential to be a stronger body than its discredited predecessor, such an outcome depends entirely on the actions of its members. There is no standard by which there will be an absolute certainty that the Council will not repeat the mistakes of the past.

Based on the short record of the Council, the members have decided to turn their back on this opportunity and chosen to repeat many of the serious mistakes of the Commission. This disappointing situation underscores the wisdom of the Bush Administration in taking a wait-and-see attitude toward the Council.



The Council will convene again this September, later this year in December, and again next March. All these sessions present opportunities for the Council to improve, and the U.S. should continue to work with Council members to ensure that the Council members with the worst human rights record be the first to be subject to the periodic reviews. There will be enormous pressure to water down the review process. One way to quickly gauge how useful that process will be is to have the countries with the worst human rights records—those most interested in white washing the reviews—assessed first.

Second, the U.S. should seek to maintain the country-specific mandates. Countries with poor human rights records have been transparent in their desire to have the country-specific mandates minimized. However, these mandates provide a valuable means for addressing gross systematic and sustained human rights abuses by singling out individual nations.

Finally, the review of the mandates should strive to more tightly define and focus their scope to the issues under consideration.

Despite the disheartening beginning of the Council, members possess the ability to change course and demonstrate that they are determined to make the Council an effective advocate for fundamental human rights. Only if this occurs should the U.S. consider running for a seat next year.

If the Universal Periodic Review process or the review of mandates continues to fall short, or the disgraceful politicization of the Council persists, it would be telling that the Council is not worth the trouble of rallying the support necessary for the United States to win a seat. Moreover, it should lead the United States to reconsider its financial support for the Council.

Mr. Chairman, this concludes my testimony. I await your questions.

[The prepared statement of Mr. Schaefer follows:]

PREPARED STATEMENT OF MR. BRETT SCHAEFER, JAY KINGHAM FELLOW IN  
INTERNATIONAL REGULATORY AFFAIRS, THE HERITAGE FOUNDATION

Mr. Chairman, thank you for providing me with the opportunity to testify on the state of the new United Nations Human Rights Council (HRC) and how it compares with its predecessor, the United Nations Commission on Human Rights (CHR). With permission, I would like my statement submitted for the record.

Since the very birth of the United Nations, protecting and advancing fundamental human rights has been one of the primary objectives of the organization. The drafters of the Charter of the United Nations included a pledge by member states “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.”<sup>1</sup> U.N. treaties, such as the Universal Declaration on Human Rights, which the General Assembly passed in 1948, form the core of international standards for human rights.

Yet the U.N.’s record in promoting fundamental human rights in recent times has been one of failure and inaction. No institution illustrated this failing more than the U.N. Commission on Human Rights. As the premier human rights body in the U.N. system, the CHR was charged with holding “public meetings to review the human rights performance of States, [adopting] new standards and [promoting] human rights around the world.”<sup>2</sup> Sadly, the CHR devolved into a feckless organization that human rights abusers use to block criticism or action to promote human

<sup>1</sup> Charter of the United Nations, preamble, at <http://www.un.org/aboutun/charter/index.html> (September 1, 2006).

<sup>2</sup> United Nations, “UN in Brief: What the UN Does for Justice, Human Rights and International Law,” at [http://www.un.org/Overview/uninbrief/chapter3\\_humanrights.html](http://www.un.org/Overview/uninbrief/chapter3_humanrights.html) (September 1, 2006).



rights.<sup>3</sup> Two prominent examples of politicization and the selectivity by the Commission are:

- *Countries with poor human rights records successfully sought out seats on the Commission to block scrutiny.* For instance, members with dubious human rights records elected to the Commission in recent years included Algeria, China, Cuba, Pakistan, Russia, Saudi Arabia, Sudan, Syria, Vietnam and Zimbabwe. Libya served as chairman of the Commission in 2003, despite its ties to the Lockerbie airliner bombing and its own domestic human rights abuses.<sup>4</sup> The U.S. ambassador walked out of the Commission in 2004 after Sudan's election to the commission despite its role in Darfur. As noted by Secretary-General Kofi Annan, "the Commission's capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism. In particular, States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others."<sup>5</sup>
- *The Commission on Human Rights routinely singled out Israel for discriminatory treatment.* For instance, the Commission's agenda devoted a special item to censuring Israel, debates in the Commission focused disproportionately on condemning Israel, country-specific resolutions against Israel were equivalent to the combined total adopted against all other countries, and emergency special sessions and special sittings were frequently dedicated to condemning Israel.<sup>6</sup> By contrast, issues such as the human rights violations in Sudan, China, Cuba, and other nations were subject to minimal scrutiny.

The disrepute of the CHR grew to the point where even Secretary-General Kofi Annan acknowledged, "We have reached a point at which the Commission's declining credibility has cast a shadow on the reputation of the United Nations system as a whole, and where piecemeal reforms will not be enough."<sup>7</sup> The Secretary-General went on to recommend replacing the CHR with a new, smaller Human Rights Council that would review the human rights practices of all of U.N. member states. The Council was to be a standing body able to meet when necessary with stronger standards for membership, such as being elected by two-thirds of the General Assembly and possessing strong record on human rights, and be charged with reviewing the human rights of every U.N. member state. Thus the stage was set for a new, more effective United Nations body to address human rights. Sadly, this historic opportunity was squandered as the United Nations fell victim to the political infighting that all too often afflicts that body.

#### THE FIRST FAILED TEST

The 2005 World Summit Outcome Document did follow through on the Secretary-General's proposal to replace the Commission with a new Human Rights Council. However, the Outcome Document contained few details beyond assigning the Council responsibility for "promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner" and instructing it to "address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon [and] promote effective coordination and the mainstreaming of human

<sup>3</sup> In part, this was a result of the size of the commission, which at 53 members was often criticized as too big to act decisively. The CHR grew from 18 countries in 1946 to 21 in 1961, 32 in 1966, 43 in 1979, and 53 in 1992.

<sup>4</sup> Richard Waddington, "Libya Elected to Chair U.N. Human Rights Body," Reuters, January 20, 2003, at <http://www.freerepublic.com/focus/news/825808/posts>, (September 1, 2006).

<sup>5</sup> "In larger freedom: towards development, security and human rights for all," Report of the Secretary-General, at <http://www.un.org/largerfreedom/chap5.htm>, (September 1, 2006).

<sup>6</sup> "The Struggle against Anti-Israel Bias at the UN Commission on Human Rights," Analysis and Commentary from UN Watch in Geneva, Issue 138, January 4, 2006, at <http://www.unwatch.org/site/apps/nl/content2.asp?c=bdKKISNqEmG&b=1314451&ct=1766305>, (September 1, 2006).

<sup>7</sup> "Secretary-General's Address to the Commission on Human Rights," Secretary-General, Office of the Spokesman, April 7, 2005, at <http://www.un.org/apps/sg/sgstats.asp?nid=1388> (September 1, 2006). Also see Mark P. Lagon, Deputy Assistant Secretary for International Organization Affairs, U.S. Department of State, "The UN Commission on Human Rights: Protector or Accomplice?" testimony before the Subcommittee on Africa, Committee on International Relations, U.S. House of Representatives, April 19, 2005, at <http://www.state.gov/p/io/rls/rm/44983.htm> (September 1, 2006).



rights within the United Nations system.”<sup>8</sup> All details of the Council, including its mandate, operations, size, membership, working methods and procedures were left to subsequent negotiation in the General Assembly.

Negotiations in the General Assembly fell considerably short of proposals by the Secretary-General, non-governmental organizations, and the United States and other countries interested in making the body more effective than the Commission. Specifically:

- *The Council has no criteria for membership other than geographical representation.* Rather than adopt strong criteria to prevent human rights abusers from sitting on the new Council, member states are merely instructed to “take into account” a candidate’s human rights record when they vote. The lack of membership criteria leaves the Council open to infiltration and manipulation by the world’s worst human rights abusers. Not even states under Security Council sanction are automatically excluded.
- *Members of the Council are elected by an absolute majority of the General Assembly, not the two-thirds majority sought by the Secretary-General and the U.S.* Each country must get at least 97 votes in the General Assembly.<sup>9</sup> This is a small improvement over the process for the CHR. Commission members were selected by the 54 countries of the Economic and Social Council, which were chosen by the General Assembly with little regard for human rights. ECOSOC rubber-stamped slates of candidates proposed by the five U.N. regional groups that usually included only as many countries as there were openings. The two-thirds requirement would have set a higher hurdle for membership and made it harder for countries with dubious human rights records to win seats on the Council with the intention of undermining the new body from within.
- *The resolution set a higher bar to suspend a HRC member—a vote of two-thirds of the General Assembly—than the simple majority necessary to win a seat.* While there is a provision for suspending a Council member that commits gross and systematic violations of human rights, that step can be taken only with the agreement of two-thirds of the members of the General Assembly. Not even 50 percent of the General Assembly could agree that Sudan was guilty of human rights violations in November 2005.
- *While the Council is charged with conducting a universal periodic review, the conclusions of the review were not tied to a mandatory outcome.* Even if the review finds numerous and serious human rights abuses, neither the Council nor the General Assembly is required to take action.
- *The Council is only marginally smaller than the Commission, from 53 members to 47.* This opens the door to states with questionable human rights records. Instead of a small body designed to attract the best citizens of each regional group, the Council has a large membership that requires a larger number of candidates.
- *Special sessions of the Commission can be called by only one-third of the Council’s membership.* Hailed as an improved capacity to deal with urgent human rights situations, the composition of the new Council makes it likely that special sessions will be politically driven. This concern was borne out during the inaugural meeting of the Council, which was immediately followed by a special session to censure Israel.

These failings led the U.S. to vote against the HRC in the General Assembly. “Absent stronger mechanisms for maintaining credible membership, the United States could not join consensus on this resolution,” explained U.S. Ambassador to the U.N. John Bolton. “We did not have sufficient confidence in this text to be able to say that the HRC would be better than its predecessor.”<sup>10</sup> Significantly, well-known human rights abusers Burma, China, Cuba, Ethiopia, Libya, Saudi Arabia, Sudan, Syria, and Zimbabwe all voted in favor of the new Council.<sup>11</sup> The Administration

<sup>8</sup>“Human Rights Council,” 2005 World Summit Outcome, General Assembly Resolution A/RES/60/1, October 24, 2005, p. 33, at <http://www.un.org/summit2005/>, (September 1, 2006).

<sup>9</sup>Only 96 votes were required in May 2006. However, with Montenegro joining the U.N. as a new member state in June 2006, there are now 192 member states.

<sup>10</sup>Ambassador John R. Bolton, “Explanation of Vote by Ambassador John R. Bolton, U.S. Permanent Representative to the United Nations, on the Human Rights Council Draft Resolution, in the General Assembly,” USUN Press Release # 51, March 15, 2006, at [http://www.un.int/usa/06\\_051.htm](http://www.un.int/usa/06_051.htm), (September 1, 2006).

<sup>11</sup>“General Assembly Establishes New Human Rights Council by Vote of 170 in Favour to 4 Against, with 3 Abstentions,” Department of Public Information, General Assembly Document



announced that it would not run for a seat on the HRC in 2006 but would continue its financial support and might run for seat in 2007 if the Council proves effective.

#### THE SECOND FAILED TEST

The second test was the May 9 election for membership on the Council. Prior to the election, candidates offered pledges of their adherence to human rights standards and justifications for their candidacy. These public statements were in many instances Kafkaesque in their absurdity and deviance from historical record. For instance:

- The Chinese government pledged that it is “committed to the promotion and protection of human rights and fundamental freedoms of the Chinese People. . . . The National People’s Congress has adopted nearly 300 laws and regulations related to the protection of civil and political rights, ensuring complete freedom of the Chinese people in movement, employment, access to information, religious belief and ways of life.”<sup>12</sup> Yet the State Department’s Human Rights report noted that China is an authoritarian state characterized by numerous and serious human rights abuses including trafficking in women and children, restrictions on the freedom of assembly, restrictions on religious freedom, arbitrary arrest and detention among many other policies in contravention of the Universal Declaration of Human Rights.<sup>13</sup>
- Cuba claims that “Either in the area of civil and political rights . . . the Cuban people can show to the world, with deep modesty, but with full satisfaction and pride, its tremendous achievements.”<sup>14</sup> The State Department, however, reports Cuba is a totalitarian state characterized by numerous, serious human rights abuses including arbitrary arrest and detention, limitations on freedom of speech and press, restrictions on freedom of movement, and severe restrictions on worker rights.<sup>15</sup>
- Saudi Arabia claims a “confirmed commitment with the defense, protection and promotion of human rights. . . . Saudi Arabia pursues the policy of active cooperation with international organizations in the field of Human Rights and fundamental freedoms.”<sup>16</sup> The State Department criticized Saudi Arabia for its serious human rights failings including arbitrary arrest, discrimination toward women, restriction of worker rights, and lack of religious freedom.<sup>17</sup>

The May 9 election validated U.S. concerns that the new Council lacked sufficient criteria to prevent major human rights abusers from gaining seats. The transparently disingenuous nature of their pledges did not keep China, Cuba, and Saudi Arabia from gaining support from a majority of the General Assembly. They were joined by fellow abusers and unfree governments in Algeria and Russia.<sup>18</sup> These countries were key players in undermining the effectiveness of the Commission on Human Rights, and so it is very likely that they will play the same role on the Council.

The General Assembly had the opportunity to prevent human rights abusers from gaining seats on the Council but did not take advantage of it. Despite promises by a number of nations to vote against human rights abusers the membership of the

GA/10449, March 15, 2006, at <http://www.un.org/News/Press/docs/2006/ga10449.doc.htm>, (September 1, 2006).

<sup>12</sup>China’s Pledge to the Human Rights Council, at <http://www.un.org/ga/60/elect/hrc/china.pdf>, (September 1, 2006).

<sup>13</sup>“China (includes Tibet, Hong Kong, and Macau),” *Country Reports on Human Rights Practices—2005*, The Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 8, 2006, at <http://www.state.gov/g/drl/rls/hrrpt/2005/61605.htm>, (September 1, 2006).

<sup>14</sup>Cuba’s Pledge to the Human Rights Council, at <http://www.un.org/ga/60/elect/hrc/cuba.pdf>, (September 1, 2006).

<sup>15</sup>“Cuba,” *Country Reports on Human Rights Practices—2005*, The Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 8, 2006, at <http://www.state.gov/g/drl/rls/hrrpt/2005/61723.htm>, (September 1, 2006).

<sup>16</sup>Saudi Arabia’s Pledge to the Human Rights Council, at <http://www.un.org/ga/60/elect/hrc/saudi-arabia.pdf>, (September 1, 2006).

<sup>17</sup>“Saudi Arabia,” *Country Reports on Human Rights Practices—2005*, The Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 8, 2006, at <http://www.state.gov/g/drl/rls/hrrpt/2005/61698.htm>, (September 1, 2006).

<sup>18</sup>While countries like Sudan and Zimbabwe chose not to run for election, nothing prevents them from running in the future. Indeed, Venezuela easily surpassed the minimum number of votes necessary to be elected to the Council, but was denied only because a two other Latin Countries garnered more votes. “General Assembly Elects 47 Members of New Human Rights Council; Marks New Beginning for Human Rights Promotion, Protection,” Sixtieth General Assembly, GA/10459, May 9, 2006, at <http://www.un.org/News/Press/docs/2006/ga10459.doc.htm>, (September 1, 2006).



Council remains only marginally better than the Commission. Of the 47 new members, only 24 were ranked as “free” by Freedom House in its 2006 worldwide survey of political rights and civil liberties versus 24 on the 53 member Commission.<sup>19</sup> The new Council includes 9 countries ranked “not free” in political and civil liberties: Algeria, Azerbaijan, Cameroon, China, Cuba, Pakistan, Russia, Saudi Arabia, and Tunisia. Only 19 Council members were ranked as “free” or “mostly free” by the 2006 *Index of Economic Freedom*, published by The Heritage Foundation and *The Wall Street Journal*, versus 18 on the Commission in 2006.<sup>20</sup>

This situation should surprise no one. After all, every nation claims membership in the U.N. even though many fail to adhere to the principles embodied in the U.N. Charter, including the commitment to fundamental human rights. Indeed, many member states actively subvert those principles and repress their own populations—less than half of the United Nations member states are ranked as “free” by Freedom House in terms of political rights and civil liberties and less than half were ranked as economically “free” or “mostly free” by the *Index of Economic Freedom*. Public scrutiny and pressure surrounding the election of the Council’s first slate of members failed to spur conscientious behavior. We can expect little improvement as pressure and scrutiny will likely decline in future elections.

#### THE THIRD FAILED TEST

The Human Rights Council convened for the first time on June 19, 2006. The first session was marked by procedural issues designed to carry on many of the operations of the CHR. For instance, the Council extended the mandates of the 28 thematic and 13 country mandates established by the Commission and carried out by independent human rights experts (known as Special Procedures). The Council also established a “working group” to begin to consider how the universal periodic review of the human rights performance of all U.N. member states should operate, how often countries should be reviewed, and when to begin the reviews.

This modest action was disappointing. The extension of mandates was both good and bad. Some experts conduct important work and there was significant effort put forth by some countries to eliminate the country-specific monitors. However, not all mandates or experts are worthwhile. For instance, Jean Ziegler is the current Special Rapporteur on the Right to Food and also serves as the vice-president of the organization that grants the “Moammar Khaddafi Human Rights Prize.”<sup>21</sup> Other rapporteurs have ventured far from the core functions of their mandates. The Council established an “open-ended intergovernmental working group to formulate concrete recommendations on the issue of reviewing and, where necessary, improving and rationalizing all mandates, mechanisms, functions and responsibilities.”<sup>22</sup> It is uncertain to what extent the mandates and the rapporteurs will be scrutinized or if the Council will undertake to tighten their mandates.

The fact that the Council undertook little action toward implementing the universal periodic review was unacceptable. This process was considered the most important achievement that would keep the Council from replicating the worst weaknesses of the Commission. It is unknown whether the system that is ultimately established will conduct its assessments of human rights practices with the frequency and frankness that would make the Council a true improvement over the Commission.

A serious disappointment was the inability of the Council to adopt a resolution addressing the victims of Darfur, but the singular failure of the first Council session was the hostility of the body toward Israel. On this subject, the Council proved just as vulnerable to politicization and selective judgment as the Commission. In an extended déjà vu experience, the Council—led by the Organization of the Islamic Conference (OIC) repeatedly—singled out Israel for censure despite the efforts of some Western countries:

<sup>19</sup>Freedom House, “Freedom in the World 2006: Selected Data from Freedom House’s Annual Global Survey of Political Rights and Civil Liberties,” at <http://www.freedomhouse.org/uploads/pdf/Charts2006.pdf>, (September 1, 2006).

<sup>20</sup>Marc A. Miles, Kim R. Holmes, and Mary Anastasia O’Grady, 2006 *Index of Economic Freedom* (Washington, D.C.: The Heritage Foundation and Dow Jones & Company, Inc., 2006), at <http://www.heritage.org/index>, (September 1, 2006).

<sup>21</sup>“Switzerland’s Nominee to the UN Human Rights and the Moammar Khaddafi Human Rights Prize,” A Report by UN Watch, June 20, 2006, at <http://www.unwatch.org/site/apps/nl/content3.asp?c=bdKKISNqEmG&b=1746395&ct=2667241&tr=y&auid=1788830>, (September 1, 2006).

<sup>22</sup>“Special Procedures assumed by the Human Rights Council,” Office of the United Nations High Commissioner for Human Rights, at <http://www.ohchr.org/english/bodies/chr/special/index.htm>, (September 1, 2006).



- The Council's only substantive debate was subject to invective directed at Israel. Efforts by the OIC to focus the agenda solely on Israel were overcome. But the five topics on the agenda were led by the "human rights situation in the occupied Arab Territories, including Palestine."
- The Council's sole country-specific resolution censured Israel by a vote of 29 to 12 and adopted a decision to discuss human rights violations committed by Israel in the Palestinian territories on a permanent basis in all of the Council's meetings. No mention was made of Palestinian provocations or human rights violations.<sup>23</sup>
- The Council extended all the mandates of the Commission for specified periods, except for the "Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967" which was extended "until the end of the occupation."<sup>24</sup>
- Immediately following the end of the first session, the Council held its first "Special Session" with the support of 21 out of 47 members, during which it censured Israel and decided to dispatch the Special Rapporteur on the occupied Palestinian territories on a fact-finding mission.<sup>25</sup>
- The Council convened its second "Special Session" on August 11, 2006 during which it adopted a resolution 27 to 11 with 8 abstentions that strongly condemned Israel for "violations of human rights and breaches of international humanitarian law in Lebanon" and established a high-level inquiry commission for Lebanon which was immediately dispatched to the region.<sup>26</sup> There was no reference to provocations by Hezbollah beyond a vague call for "all concerned parties" to respect the rules of international humanitarian law, refrain from violence against civilians, and to treat detained combatants and civilians in accordance with the Geneva Conventions.

#### CONCLUSION

The hope that a new Human Rights Council would rectify the poor record of the United Nations Commission on Human Rights on holding human rights abusers to account has, sadly, proven illusory. The reformed body does not incorporate the types of reforms that would have led inevitably to a more effective body. While the HRC has the potential to be a stronger body than its discredited predecessor, such an outcome depends entirely on the actions of its members. Based on the short record of the Council, the members have turned their back on this opportunity and have chosen to repeat many of the serious mistakes of the Commission. This disappointing situation underscores the wisdom of the Bush Administration in taking a wait-and-see attitude toward the Council.

The Council will convene again in September 2006 for three weeks; in December 2006 for two weeks; and in March 2007 for four weeks. All of these sessions present opportunities for the Council to review the mandates, adopt a strong universal peer review process, and distance itself from the disgraceful preoccupation with Israel that characterized its first session. Indeed, the U.S. should work with Council members to:

- *Ensure that the Council members with the worst human rights records—Algeria, China, Cuba, Pakistan, Russia, and Saudi Arabia—be the first targets of the periodic reviews.* There will be enormous pressure to water down the peer review process. One way to quickly gauge how useful the process will be is to have the countries with the worst human rights records—those most interested in whitewashing the reviews—assessed first. The quality of these reviews will be a useful tool to measure the dedication, effectiveness, and willingness of the HRC to confront human rights abusers and to resist the influence of those most determined to undermine its work. Only if the HCR conducts strong, condemnatory reviews of these well-known abusers should the U.S. consider seeking a seat in the future.

<sup>23</sup>"Report to the General Assembly on the First Session of the Human Rights Council," Human Rights Council, First session 19–30 June 2006, A/HRC/1/L.10/Add.1, July 5, 2006, at [www.ohchr.org/english/bodies/hrcouncil/docs/L.10add.1.doc](http://www.ohchr.org/english/bodies/hrcouncil/docs/L.10add.1.doc), (September 1, 2006).

<sup>24</sup>"Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled 'Human Rights Council,'" Human Rights Council, First Session, A/HRC/1/L.6\*, June 29, 2006, at <http://daccessdds.un.org/doc/UNDOC/LTD/G06/128/30/PDF/G0612830.pdf>, (September 1, 2006).

<sup>25</sup>"First special session of the Human Rights Council, 5–6 July 2006," Human Rights Council, at <http://www.ohchr.org/english/bodies/hrcouncil/specialsession/index.htm>, (September 1, 2006).

<sup>26</sup>"2nd Special session of the Human Rights Council, Geneva, 11 August 2006," Human Rights Council, at <http://www.ohchr.org/english/bodies/hrcouncil/specialsession/2/index.htm>, (September 1, 2006).



- *Maintain country-specific mandates.* Countries with poor human rights records have been transparent in their desire to have country-specific mandates minimized. They oppose them because they dislike being singled out. Some have suggested that the peer review process and the opportunity to call special sessions reduce the necessity for such mandates. However, country-specific mandates are a valuable means for addressing gross, systematic, and sustained human rights abuses by singling out individual nations and demanding action. They should not be abandoned.
- *Subject the review of mandates to a stringent process.* Too often the special rapporteurs range widely from their assigned areas. They also are subject to politicization. The review of mandates should strive to more tightly define and focus their scope to the issue under consideration.

Despite the disheartening beginning of the Council, HRC members possess the ability to change course and demonstrate that they are determined to make the body an effective advocate for fundamental human rights. Only if this occurs should the U.S. consider running for a seat on the Council. If the peer review process is inconclusive or incomplete by the spring, the U.S. should again wait a year before deciding whether to run for a seat. If the peer review process or the review of mandates continues to fall short, or the disgraceful politicization of the Council persists, it would be a telling sign that the HRC is not worth the trouble of rallying the support necessary to win a seat. Moreover, it should lead the U.S. to reconsider its financial support for the Council.

Mr. Chairman, this concludes my testimony. I would be pleased to answer any questions the committee may have.

Mr. SMITH. Mr. Schaefer, thank you very much.  
Mr. Neuer.

#### **STATEMENT OF MR. HILLEL C. NEUER, EXECUTIVE DIRECTOR, UNITED NATIONS WATCH**

Mr. NEUER. Mr. Chairman and distinguished Members of the Committee, thank you for the privilege of testifying at today's hearing on a vital international issue, the universal protection of human rights.

UN Watch, the NGO that I direct, is dedicated to holding the UN accountable to its own charter principles and to promoting human rights for all. UN Watch was founded by a leading advocate of the civil rights movement, the late Morris Abram, following his term as U.S. Ambassador to the UN in Geneva. We continue to be based in Geneva, and actively participate in proceedings of the UN human rights apparatus that is headquartered there.

The new Human Rights Council was widely hailed by proponents as "the dawn of a new era." So far, however, it looks virtually the same as and in some ways worse than its discredited predecessor, the Human Rights Commission. Let me be clear. Modest progress is still possible.

As mentioned, annual elections allow for scrutiny of candidates, enabling the defeat of a few human rights violators, as happened this year with Iran. The Council is working on a universal review mechanism meant to examine the rights records of all countries equally. If achieved and if that process will mean more than having the Saudis fill out a questionnaire ensuring the UN of its commitment to women's rights, or the Castro regime of its respect for freedom of speech, this would be an improvement.

In certain areas then, with a great deal of hard work and moral courage, one can imagine a future that is somewhat brighter. But if we look honestly at the reality so far, at the existing facts, the record speaks for itself. Despite holding three sessions that purported to address substantive human rights issues, the Council



managed to ignore virtually all of the world's human rights violations.

The situation in Darfur, perhaps today's greatest abuse of human rights, merited only a brief passing debate with Sudan easily escaping censure. Despite urgent warnings of even worse atrocities to come, there has been not a single attempt by Council members to convene a special session for the millions of victims in Darfur, nor am I aware of a single Council member that intends to introduce a resolution for the victims of Darfur or anywhere else at the upcoming September session.

Mr. Chairman, as you rightly mentioned, instead the Council, which is dominated by countries from the Organization of the Islamic Conference, the OIC, devoted 100 percent of its country-specific resolutions, two special sessions, one "fact-finding mission," and a "high-level Commission of inquiry" to one single purpose—the demonization of Israel.

In these one-sided and politically motivated attacks, the Council decided that Israel is the world's only human rights violator. It said not a word about Hamas and Hezbollah, not a word about their murderous attacks across international borders, not a word about the role of Iran and Syria as was mentioned in coordinating the axis of terror that now threatens the peace of the region, and indeed the peace of the world. These resolutions encourage extremists and are counter-productive to the cause of peace and human rights.

Just like at the old Commission, we have a pack of repressive regimes at the Council that shamelessly hounds Israel at every opportunity. What is disturbing, however, is that several free countries have also decided to, in Senator Moynihan's memorable words, "join the jackals."

UN Watch is disappointed that democratic states like India, South Africa, Argentina, Brazil, Mexico, Peru and Uruguay all lent their support for the OIC initiatives, each of which contravenes the founding principles of the Council, and, taken together, amount to an assault on its very integrity. In the report released today by UN Watch, these countries are designated as being counter-productive to the cause of human rights.

The attitude of the Council has negatively influenced related entities. Last month the UN's Committee on the Elimination of Racial Discrimination called its own special session on the Lebanon crisis on the pretext that Israel was acting out of "racist motives." Though a few members rightly objected that the crisis was completely outside the panel's mandate, this was to no avail.

All of this on the same day that Iran's President Mahmoud Ahmadinejad renewed his blood-thirsty call for the destruction of the Jewish state.

Then there was the Council's advisory Sub-Commission. It is prohibited by its own rules from addressing specific countries, but law and precedent went out the window in the rush to condemn Israel, and it too intervened with a one-sided statement on the situation in Lebanon. Not a word on Hezbollah's missile attacks against Israeli citizens. Not a word on Israeli victims. The member from the United Kingdom warned they would be "breaking the rules" but to no avail. In the end even she joined the jackals.



When I protested to one of the Sub-Commission members, with a chuckle he replied, “And do you think the Council will admonish us?”

The Organization of the Islamic Conference and its allies, the countries that sponsor and support the demonization of Israel are the same that sponsor and support attacks on democracy. At a time when the world is threatened by re-emergent terrorist groups acting in the name of global jihad, the OIC-controlled Council further encouraged extremists by adopting a resolution against “defamation of religions.” This was in fact a thinly veiled endorsement of the fury of violence that followed the Danish newspaper cartoon controversy.

For the past year, the OIC has assiduously stoked this fury by demanding and winning repeated pronouncements from the High Commissioner, independent experts, and the Council, indeed the very charter of the Council, the GA resolution adopted in March is tainted by its own thinly veiled approval of the violent reactions to the cartoon controversy. It is in the preamble.

These OIC-sponsored texts are meant to intimidate domestic dissidents by characterizing liberal democracy as blasphemy.

Mr. Chairman, there were warnings about all of this, but the response too often was complacency. For 2 months prior to its opening, the Council held preliminary meetings in Geneva to plan its agenda. I was there. Hypocrisy was rampant. Yet no country bothered to respond. Saudi Arabia, whose schoolbooks teach hatred of all non-Muslim infidels, pronounced itself on “incitement of religious hatred.” Syria, which held Lebanon under its jack-boot for decades, urged special attention to the crimes of occupation. The Palestinian observer, who answers to the Hamas terrorist leadership, opined about human rights.

The response—silence. This sent a message.

There were many other negative signs. The Council in its wisdom decided to renew as one of its experts Mr. Jean Ziegler, the man who, in 1989, co-founded the Moammar Khadaffi Human Rights Prize, an award that in 2002 he went on to win himself together with convicted French Holocaust denier, Roger Garaudy. Mr. Ziegler has abused his post as an expert on the right to food, neglecting the world’s hungry to pursue a radical political agenda, regularly accusing the United States of causing all the world’s misery and of committing genocide against Cuba. Last year he compared Israel to Nazi Germany.

Allow me to salute you, Mr. Chairman, and the 69 other Members of Congress who wrote to the UN to protest this anti-Semitic act.

The old Commission was most famously and fatally discredited by its election of Libya as Chair in 2003, as was mentioned. Now, as one of its first acts the Council has appointed Khadaffi’s man at the UN to be one of its experts. This too sends a message.

Mr. Chairman, to conclude, despite unfounded claims of a new era, the goal of real reform remains elusive. Only by honestly addressing both the Council’s strengths and weaknesses will the cause of reform be advanced. Complacency in the face of this serious crisis of credibility will only lead the Council down the same



ignominious path of the old Commission. But, if we act now with conviction and alacrity the Council may yet meet a better fate.

Thank you.

[The prepared statement of Mr. Neuer follows:]

PREPARED STATEMENT OF MR. HILLEL C. NEUER, EXECUTIVE DIRECTOR, UNITED NATIONS WATCH

REFORM OR REGRESSION? AN ASSESSMENT OF THE UN'S NEW HUMAN RIGHTS COUNCIL

I. INTRODUCTION

Mr. Chairman and Members of the Subcommittee:

Good afternoon and thank you for the privilege of testifying at today's hearing on a vital international issue: our collective commitment to protect human rights.

My name is Hillel Neuer and I am the executive director of UN Watch, a non-governmental organization that holds the United Nations accountable to the principles of its Charter—most notably, the principles of human rights and equality. Based in Geneva, we devote special attention to monitoring the UN human rights apparatus that is headquartered there.<sup>1</sup>

On March 15, 2006, by Resolution 60/251, the UN General Assembly created a new human rights body, the Human Rights Council (the "Council"), to replace the old Commission on Human Rights (the "Commission"). To date, the Council has met in one regular session (June 19 to 30) and two special sessions (July 5–6 and August 11). The next regular session is scheduled for September 18 to October 6.

In this statement we assess the work of the Council so far. Our conclusion: despite looking promising on paper, the Council in practice has, sadly, proved to be much the same as—and in some ways worse than—the Commission.

One cannot discount the possibility of certain modest improvements in the future. So far, however, the Council's record has been a profound disappointment. Despite holding three sessions that purported to address substantive human rights issues, the Council has managed to ignore most of the world's worst abuses. The situation in Darfur—perhaps today's worst case of mass human rights abuse—merited only a brief passing debate, with Sudan easily escaping censure. Notwithstanding urgent warnings of even worse atrocities to come, there has been no attempt by Council members to convene a special session for the millions of Darfur victims. Instead, the Council, dominated by the Organization of the Islamic Conference (OIC), devoted 100% of its country-specific resolutions, two special sessions, one "fact-finding" mission, and a "high-level commission of inquiry" to one-sided and politically-motivated attacks on Israel, all of which granted effective immunity to violations of international law by Hamas and Hezbollah.

Moreover, at a time when the world is threatened by re-emergent terrorist groups acting in the name of global Jihad, the OIC-controlled Council provided further encouragement to extremists by adopting resolution HRC/1/L.16—a thinly-veiled endorsement of the fury of violence that followed the Danish newspaper cartoon controversy. This same malignant spirit saw the Council allow the blatant breach of mandate by its advisory Sub-Commission, which, not to be outdone, purported to censure Israel despite its express legal incapacity to censure any country. Finally, in what seemed like a defiant demonstration of fealty to the old Commission, which was fatally discredited by the election of Libya as Chair in 2003, the Council re-appointed as one of its experts the co-founder of the "Moammar Khaddafi Human Rights Prize."<sup>2</sup>

<sup>1</sup> UN Watch is a non-governmental organization dedicated to monitoring the UN according to the principles of its Charter, and to the promotion of human rights worldwide. Based in Geneva, UN Watch was founded in 1993 by the late Morris Abram, former U.S. Permanent Representative to the UN in Geneva and a leading advocate of the civil rights movement. Board members include human rights advocates and scholars from around the globe, including Per Ahlmark, former Deputy Prime Minister of Sweden, and Professor Irwin Cotler, international human rights lawyer and former Attorney General of Canada. Affiliated with the American Jewish Committee, UN Watch is chaired by Alfred H. Moses, a former U.S. ambassador and presidential special envoy to Europe. UN Watch is at the forefront in the struggle against anti-Semitism at the UN, and has been outspoken for victims of religious persecution in China, political repression in Zimbabwe, the violation of women's rights in Iran, and many other causes. It is accredited by the UN as a NGO in Special Consultative Status with the Economic and Social Council (ECOCOC).

<sup>2</sup> See, *infra*, Section D regarding the Council's human rights experts.



The OIC's subversion of the world's top human rights body for blatantly political ends would not be successful without willing allies. Predictably, repressive regimes like China, Cuba, and Saudi Arabia have all lent their support for the OIC initiatives, each of which contravenes the founding principles of the Council and, taken together, amount to an assault on its integrity. What is disturbing, however, is that some free countries have also decided to—in Senator Moynihan's memorable words—join the jackals. Those joining include not only members of the Soviet-era Non-Aligned Movement like India, but also the South American countries of Argentina, Ecuador, Mexico, Peru and Uruguay. All of these, as explained in the comparative table below, we have designated as counter-productive to human rights protection.

By contrast, a solid minority alliance of eleven Council members has emerged to defend the principles, values and institutions of liberal democracy which the Council is supposed to promote. The Council's *de facto* democratic alliance is comprised of its European Union (EU) members (Czech Republic, Finland, France, Germany, Netherlands, Poland, United Kingdom), EU-aligned countries (Romania and Ukraine), Canada and Japan. This democratic alliance we have designated as constructive.

Others were mixed: countries like Cameroon, Ghana, and Nigeria supported some of the OIC measures, but, on the grossly one-sided resolution of the second special session, constructively defied both their African and OIC group alliances in abstaining. Switzerland admirably opposed both of the one-sided and inflammatory OIC resolutions of the regular session, but regrettably refused to join the democratic alliance in opposing those of the special sessions.

Our diagnosis of the Council's ills does not mean that supporters of reform should give up on pursuing every opportunity to remedy them, such as by cultivating the potentially positive universal periodic review mechanism, or by working to strengthen the quality of Council membership through the partially-improved annual election procedure. On the contrary, those who desire a truly reformed Council must begin by addressing its serious failings with the same candor and courage exercised by UN Secretary-General Kofi Annan last year in his diagnosis of the Commission.

As Mr. Annan acknowledged, the Commission was discredited by its poor membership and performance. In recent years, it included some of the world's worst human rights violators.<sup>3</sup> It was known for its indifference to the vast majority of the world's most pernicious and persistent abuses, and for its obsessive and unbalanced condemnation of one country—Israel.<sup>4</sup> Indeed, in the words of Secretary-General Annan, the Commission's "credibility deficit" was "cast[ing] a shadow on the reputation of the United Nations system as a whole," and he called for meaningful reform.<sup>5</sup> Before the new Council's first meeting, Mr. Annan expressed his hope that it would avoid the "selectivity and politicization" that had characterized the Commission. Mr. Annan addressed the most egregious example when he specifically urged the Council not to focus on Israel alone.<sup>6</sup>

The Council was widely hailed by proponents of the March resolution as "the dawn of a new era," in the words of UN High Commissioner for Human Rights Louise Arbour.<sup>7</sup> "I claim that it is clearly better," said General Assembly President Jan

<sup>3</sup> Cuba, Libya (its 2003 chair), Saudi Arabia, Sudan, and Zimbabwe, for example.

<sup>4</sup> At the Commission, over a 40-year period, 30 percent of the resolutions condemning human rights violations by specific states were against Israel—and in the several years preceding its disbanding, that percentage rose to half. In 2005, for example, the Commission adopted four resolutions against Israel, equaling the combined total of resolutions against all other states in the world. (Belarus, Cuba, Myanmar, and North Korea were the subject of one resolution each.) For more information on the Commission's anti-Israel bias, see Hillel C. Neuer, "The Struggle against Anti-Israel Bias at the UN Commission on Human Rights," Jerusalem Center for Public Affairs, January 1, 2006 (available under "Articles" at [www.unwatch.org](http://www.unwatch.org)).

<sup>5</sup> Report of the Secretary-General, "In larger freedom: towards development, security and human rights for all," March 21, 2005 (A/59/2005). Mr. Annan's proposed reforms were stronger than those ultimately enacted. He envisioned a smaller, more efficient body, with a strengthened mandate and a more credible membership, elected by a two-thirds vote. Six months of contentious negotiations in the General Assembly, however, resulted in the watered-down compromise text that became Resolution 60/251. UN Watch supported Mr. Annan's stronger reforms and was disappointed by the lesser changes enacted in Resolution 60/251. See, e.g., Steven Edwards, "Canada backs new UN Human Rights body," *National Post*, March 16, 2006 ("The council falls short of what we in the human rights community have requested for many years. It's not what Kofi Annan asked for a year ago. And we're concerned that in June the faces around the table will look awfully familiar," said Hillel Neuer, a Montrealer serving as executive director of monitoring group UN Watch"); UN Watch, "New Human Rights Council Proposal Falls Short," Press Release, February 23, 2006.

<sup>6</sup> Secretary-General Kofi Annan, *Statement at Press Conference*, June 15, 2006.

<sup>7</sup> Address to Human Rights Council, June 19, 2006.



Eliasson, who oversaw the reform negotiations.<sup>8</sup> He called Resolution 60/251 “a new beginning for the promotion and protection of human rights.” He described the Council as a body which would be based on “dialogue and cooperation” and would be “principled, effective and fair.”<sup>9</sup>

France’s UN envoy Jean Marc de La Sabliere expressed confidence that the Council would be “more active, more reactive and more demanding,” saying “it shows we are serious about reform.”<sup>10</sup> Swedish Prime Minister Goran Persson and Mexican President Vicente Fox described the Council’s creation as “an historic achievement” that would “improve the life conditions for millions of people.”<sup>11</sup> Swiss Foreign Minister Micheline Calmy-Rey, whose web page describes the Council as a Swiss initiative, said that the creation of the Council was a “major advance in the UN’s history of protecting human rights.”<sup>12</sup> Many leading human rights NGOs likewise celebrated the new Council as “a significant improvement.”<sup>13</sup> Evidence warning to the contrary tended to be dismissed.<sup>14</sup>

Regrettably, the Council has not lived up to reform advocates’ hopes or to Resolution 60/251’s promises. Its members are supposed to be elected based on their human rights records and commitments—yet the first Council includes serial human rights violators like China, Cuba, Russia and Saudi Arabia. It is supposed to promote and protect human rights “without distinction of any kind and in a fair and equal manner,” and to base its work on “the principles of universality, impartiality, objectivity, and non-selectivity”—yet a full 100% of its country-specific resolutions have condemned Israel, and both of its special sessions were convened for the same exclusive purpose, with a one-sided bias that shocked even veteran UN diplomats. In this regard, the new Council’s record is even worse than that of the old Commission.

In the sections that follow, we first discuss the standards set for the Council by Resolution 60/251. We then assess the Council’s performance in six important areas: (1) membership; (2) ending politicization and selectivity, (3) addressing gross human rights violations, (4) establishing effective mechanisms, (5) creating a new culture of dialogue and cooperation, and (6) championing the UN Charter’s democratic values. Finally, we provide some recommendations for the upcoming session and beyond.

## II. RESOLUTION 60/251’S STANDARDS

Resolution 60/251 gives the Council the following main responsibilities:

<sup>8</sup>“The World Tonight”, BBC Radio, May 10, 2006.

<sup>9</sup>Mr. Eliasson further described the Council as “a body whose members would uphold the highest standards in the promotion and protection of human rights,” and as “a body that would advance the founding principles that were initiated by the General Assembly with the Universal Declaration of Human Rights.” Official Record of General Assembly Plenary Meeting (A/60/PV.72), March 15, 2006.

<sup>10</sup>“UN General Assembly overwhelmingly endorses new rights council,” *Agence France Presse*, March 15, 2006.

<sup>11</sup>“Article by the Swedish Prime Minister Göran Persson and Mexico’s President Vicente Fox,” April 3, 2006. Council President Luis de Alba of Mexico described the Council as “a new institution able to respond to the expectations of the world’s peoples” and “an opportunity to overcome the deficiencies” of the past. Address to Human Rights Council, June 19, 2006.

<sup>12</sup>Address to Human Rights Council, June 19, 2006. The resolution created an institution “with greater legitimacy,” said Peter Maurer, Switzerland’s UN ambassador. “We do not share the intransigent and maximalist approaches of certain delegations, who want to make us believe that they are the only ones fighting for an ambitious human rights machinery,” he added. *Official summary of General Assembly debate*, March 15, 2006.

<sup>13</sup>Human Rights Watch, “New Rights Council Offers Hope for Victims,” Press Release, March 15, 2006; see also Amnesty International, “UN Human Rights Council: A Victory for Human Rights Protection,” Press Release, March 15, 2006 (welcoming the Council’s creation as “an historic step toward strengthening the U.N.’s human rights machinery” and “a victory for human rights protection around the world”); Amnesty International, *About the Proposed Human Rights Council*, March 13, 2006 (stating that “[t]he new Human Rights Council would offer far-reaching, long-lasting and positive opportunities to further human rights protection”); *NGOs Make Urgent Appeal to U.N. Member States to Back Human Rights Council Resolution*, March 9, 2006 (63 NGOs—including Amnesty International, the Conference of NGOs (CONGO), Human Rights First, Human Rights Watch, the International Commission of Jurists, and the International Service for Human Rights, among many others—calling the draft that became Resolution 60/251 “a sound basis to strengthen the U.N.’s human rights machinery,” and urging its adoption).

<sup>14</sup>Following the election of Council members on May 9, 2006, a BBC Radio interviewer asked Human Rights Watch executive director Kenneth Roth whether he was concerned that a majority of Council members had voted in the General Assembly against action for the victims of Darfur. “They have to condemn Sudan for what’s going on in Darfur,” replied Mr. Roth, “and I have every confidence that they will.” *The World Tonight*, BBC Radio, May 10, 2006. Regrettably, despite holding three sessions, they have not.



- to promote universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner;
- to address situations of violations of human rights, including gross and systematic violations;
- to promote effective coordination and mainstreaming of human rights within the United Nations system;
- to promote human rights education and learning, advisory services, technical assistance, and capacity building;
- to serve as a forum for dialogue on thematic issues on all human rights;
- to make recommendations to the UN General Assembly for the further development of international law in the field of human rights;
- to promote the full implementation by UN member states of their human rights obligations and commitments;
- to undertake a universal periodic review of every UN member state's fulfillment of its human rights obligations and commitments; and
- to contribute, through dialogue and cooperation, toward the prevention of human rights violations and respond promptly to human rights emergencies.

The resolution requires that the Council's work "shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation with a view to enhance the promotion and protection of all human rights. . . ." It further requires Council members to "uphold the highest standards in the promotion and protection of human rights, fully cooperate with the Council, and be reviewed under the universal periodic review mechanism during their term of membership."

### III. ASSESSMENT

#### A. Membership

To understand the Council, one must understand the way its members are elected and the composition of its current membership.

On membership, Resolution 60/251 represents a compromise between the ideals of human rights advocates and the realities of UN politics. It provides that Council members should be chosen based on their human rights records and commitments, but imposes a significant structural constraint: The Council's 47 seats are divided by a set formula among the UN's five regional groups—some of which have more liberal democratic members than others. The Council must always have 13 members from the African Group, 13 from the Asian Group, 6 from the Eastern European Group, 8 from the Latin American and Caribbean Group ("GRULAC"), and 7 from the Western European and Others Group ("WEOG"). Regional allotment was the practice in the Commission as well, but a re-distribution of seats reduced WEOG's representation in the Council, a loss for democracies.<sup>15</sup>

Thus, although membership requires election, supposedly based on human rights credentials, by a General Assembly majority (rather than simply appointment by a regional group, as at the Commission), the first Council nevertheless remains 47% non-democratic.<sup>16</sup> Moreover, it still includes nine countries—19% of its members—ranked Not Free by Freedom House in its most recent survey of political rights and civil liberties.<sup>17</sup> Four of these nine—China, Cuba, Russia, and Saudi Arabia—are

<sup>15</sup> The re-jiggering of seats for the Council resulted in gains for the Asian and Eastern European Groups and losses for GRULAC and WEOG. In percentages, the Council is divided up as follows: 27.5% African Group; 27.5% Asian Group; 13% Eastern European Group; 17% GRULAC; and 15% WEOG. This roughly corresponds to each group's current representation in the General Assembly (which is 28% African; 28% Asian; 12% Eastern European; 17% GRULAC; and 15% WEOG). The Commission had 53 seats, divided as follows: 15 for the African Group (28%), 12 for the Asian Group (23%), 5 for the Eastern Europe Group (9%), 11 for GRULAC (21%), and 10 for WEOG (19%).

<sup>16</sup> Of the 47 Council members, only 25—a slight majority of 53%—are Free democracies under Freedom House's standards. Although this is a small step forward, compared to the 2006 Commission's figure of 45%, it does not represent a significant break from the past. In addition, in terms of press freedom—a key indicator of a country's respect for individual liberty, human rights, and the rule of law—only 15 of the new Council members (32%) ranked in the top third of the latest worldwide press freedom index published by Reporters without Borders (*Reporters Sans Frontières*). A larger proportion—18 of the members, or 38%—ranked, disappointingly, in the bottom third of the index. For more information on Council members' human rights records, see *UN Watch Statement on the UN Human Rights Council*, May 15, 2006.

<sup>17</sup> These nine are: Algeria, Azerbaijan, Cameroon, China, Cuba, Pakistan, Russian Federation, Saudi Arabia, and Tunisia.



also among Freedom House's "Worst of the Worst" human rights abusing regimes, as well as among five countries UN Watch identified, before the May 9, 2006 election, as particular threats to the Council's legitimacy.<sup>18</sup> Sadly, all four received well over the 96-vote threshold that was supposed to prevent human rights violators from winning Council membership. Saudi Arabia, for example, won 126 votes, close to two-thirds of the Assembly.

In addition, non-democracies control the Council's two largest regional groups, Africa and Asia, which together hold a majority (26, or 55%) of the council's 47 seats. Only 30% of the Asian Group members, and 38% of those from the African Group, are Free countries under Freedom House's standards.<sup>19</sup>

Furthermore, the Council is dominated by the Organization of the Islamic Conference ("OIC"), the UN's Islamic bloc. Seventeen OIC countries are members, representing 36% of the Council's total membership.<sup>20</sup> This number is significant, as Resolution 60/251 allows one-third of the Council, or 16 members, to convene a special session.<sup>21</sup> As discussed below, in the Council's first two months of existence, the OIC has already exercised this power to call special sessions to examine Israel, twice.

OIC countries also dominate both the African and Asian blocs in the Council, which together constitute its majority. The OIC holds 9 of the 13 African Group seats (69%) and 7 of the 13 Asian Group seats (54%).<sup>22</sup> Thus Morocco or Algeria will typically head the African Group, and Saudi Arabia the Asian Group. Regrettably, the Islamic bloc—led by its more extremist member states—has abused this enormous power by turning the Council into their diplomatic plaything.

#### *B. Ending Politicization and Selectivity*

The Commission's downfall was its extreme politicization and selectivity, epitomized by its gross discrimination against Israel. To be sure, Israel must be held accountable for its human rights record like every other UN member state. But at the Commission, Israel was not treated like other UN member states—most of whom, including egregious human rights abusers, received no Commission scrutiny or condemnation. Instead, Israel was singled out for a unique measure of differential treatment. Israel alone was subject to its own special agenda item. Israel alone was targeted by no less than half of all country-specific resolutions. Israel alone was barred from any of the Commission's regional groups.

The new Council was supposed to be different. Secretary-General Annan and others urged the Council to protect its integrity and follow a different path.<sup>23</sup> The Council's Arab and Islamic members, however, had other priorities. From the outset, they showed themselves to be more interested in using the Council to promote their anti-Israel political agenda than to protect human rights, and their numbers al-

<sup>18</sup> *UN Watch Endorsements for Elections to the UN Human Rights Council*, May 3, 2006. Thankfully, Iran—the fifth particular threat that we identified—failed in its bid for a Council seat.

<sup>19</sup> The Free countries among the African Group members are: Ghana, Mali, Mauritius, Senegal, and South Africa. The Free countries in the Asian Group are: India, Indonesia, Japan, and South Korea. By contrast, the GRULAC members are 63% Free; the Eastern European Group members, 66% Free; and the WEOG members, fully 100% Free.

<sup>20</sup> They are: Algeria, Azerbaijan, Bahrain, Bangladesh, Cameroon, Djibouti, Gabon, Indonesia, Jordan, Malaysia, Mali, Morocco, Nigeria, Pakistan, Saudi Arabia, Senegal, and Tunisia. Seven of these countries—Algeria, Bahrain, Djibouti, Jordan, Morocco, Saudi Arabia, and Tunisia—are also members of the Arab League.

<sup>21</sup> At the Commission, the support of a majority of the membership was required to convene special sessions.

<sup>22</sup> Numerically, the OIC wields more power in the Council than it does in the General Assembly, where it represents 29% of the total membership, 51% of the African Group, and 44% of the Asian Group.

<sup>23</sup> At the Council's "historic" opening, Mr. Annan urged its new members that their work "must mark a clean break from the past. . . . What must be apparent, above all, is a change in culture. In place of the culture of confrontation and distrust, which pervaded the Commission in its final years, we must see a culture of cooperation and commitment." (This notion of a new culture was repeated often by the diplomats at the Council. As discussed below in Section E, it was never clear what this was supposed to mean, a classic example of how muddled language at the UN has often led to muddled thinking and action.) Mr. Annan added that members "must recognize, as the General Assembly did when it established this Council, the importance of universality and objectivity, and the need to eliminate double standards." Mr. Eliasson likewise warned Council members to be "vigilant" against "the negative dynamics of the past," and urged them to "be guided by a spirit of renewed cooperation and of upholding the highest standards of human rights" and to show "statesmanship and preparedness not only to examine others but also to examine [themselves]." High Commissioner for Human Rights Louise Arbour called on Council members to "implement a broad concept of universality of rights and freedoms, designed to reflect first and foremost individual human dignity, rather than cater to the narrow pursuit of national self-interest and regional factionalism."



lowed them to overcome resistance from the democratic alliance. This is to the great detriment of the fledgling Council.

Despite promises to the contrary, selectivity and politicization have marked the Council's first regular session, its two special sessions, its advisory Sub-Commission and other related bodies.

### *1. The Regular Session*

During the three months between the Council's creation and inauguration, preparatory sessions in Geneva were dominated by Arab and Islamic states' incessant demands for a special agenda item to censure Israel. Regardless of the meeting's announced topic, OIC countries insisted on raising the issue, notwithstanding calls from other states that the first session should focus on creating the new body's mechanisms and initially avoid the controversy of country-specific situations. Council President Luis de Alba of Mexico, supported by Canada, members of the EU, and other democracies, attempted to ensure an unbiased agenda. As a compromise, it was agreed that the first session's substantive debate would address five issues, under a neutral agenda item, and the result would be a consensus Presidential statement.

But the OIC's power in the Council is such that two of its current causes célèbres were included among the five issues to be discussed: (1) the "human rights situation in the occupied Arab Territories, including Palestine" (the Commission's old anti-Israel item); and (2) preventing the incitement of religious hatred (the OIC's euphemism for restricting speech or publications—such as the now-infamous Danish cartoons—that Muslims might find offensive).<sup>24</sup> The debate itself, held on Monday, June 26, was dominated by Arab and Islamic states' anti-Israel tirades.

Then, on the session's final day (Friday, June 30), the OIC broke the agreement about the Presidential statement and introduced two last-minute draft resolutions: one condemning Israel for alleged human rights violations in the Occupied Palestinian Territories, and one on the incitement of religious hatred.<sup>25</sup> That evening, the Council adopted the OIC's anti-Israel draft by a vote of 29 in favor, 12 against, and 5 abstentions, making the Jewish state the only country in the world that it singled out for censure in the session. Members aligned with the EU, Canada and Japan were the minority of 12 who voted No.<sup>26</sup>

The resolution calls for expert reports with Israel prejudged as guilty of violations, and forces a permanent anti-Israel agenda item at every future Council meeting. In addition, a separate, and otherwise procedural, resolution singled out, at the OIC's demand, the Council's Special Rapporteur on Palestine—whose one-sided mandate allows for the examination of alleged Israeli violations only—as its only expert mandate with no year of expiry.

The OIC draft on "incitement of religious hatred" also passed, over objections by the democratic alliance that it ignored the countervailing free speech considerations, by a vote similar to that on the anti-Israel resolution.<sup>27</sup> This resolution was in fact a thinly-veiled endorsement of the fury of violence that followed the Danish news-

<sup>24</sup> The other three issues were: the situation in Darfur, Sudan (but with a whitewashed title: "support for the Abuja Peace Agreements by providing back-up assistance for enhancing the promotion and protection of human rights"); the situation of human rights defenders; and the situation of migratory workers.

<sup>25</sup> Proving that its interests are political, not human-rights related, the OIC did not introduce a resolution concerning the forced displacement, rape and murder of Muslim civilians in Darfur, Sudan. The perpetrator of these atrocities is, after all, an OIC-member government, not the Jewish state. The OIC did not feel that the situations of human rights defenders or migrant workers merited Council resolutions, either.

<sup>26</sup> The vote count was:

Yes (29): Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, China, Cuba, Ecuador, Gabon, India, Indonesia, Jordan, Malaysia, Mali, Mauritius, Mexico, Morocco, Pakistan, Peru, Philippines, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Tunisia, Uruguay, Zambia.

No (12): Canada, Czech Republic, Finland, France, Germany, Netherlands, Japan, Poland, Romania, Switzerland, Ukraine, United Kingdom.

Abstain (5): Cameroon, Ghana, Guatemala, South Korea, Nigeria.

Absent (1): Djibouti.

<sup>27</sup> This vote was 33–12–1, as follows:

Yes (33): Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, Cameroon, China, Cuba, Ecuador, Gabon, Ghana, Guatemala, India, Indonesia, Jordan, Malaysia, Mali, Mauritius, Mexico, Morocco, Nigeria, Pakistan, Peru, Philippines, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Tunisia, Uruguay, Zambia.

No (12): Canada, Czech Republic, Finland, France, Germany, Netherlands, Japan, Poland, Romania, Switzerland, Ukraine, United Kingdom.

Abstain (1): South Korea.

Absent (1): Djibouti



paper cartoon controversy. For the past year, the OIC has assiduously stoked this fury by demanding repeated pronouncements from the High Commissioner, independent experts, and the Council, culminating in this resolution. Indeed, the very charter of the Council—GA Resolution 60/251 of March 15, 2005—is tainted by its own thinly-veiled approval of the violent reactions to the cartoon controversy.<sup>28</sup> These OIC-sponsored texts are meant to intimidate domestic dissidents by characterizing liberal democracy as equal to blasphemy.

Yet all of this was still not enough. Seconds after the inaugural session concluded, the Arab League formally requested an immediate special session to censure Israel for recent actions in Gaza. It had the support of 21 of the Council's members, 5 more than the necessary one-third.<sup>29</sup>

### 2. *The First Special Session*

The outcome of the special session, held on July 5 and 6, was preordained. Both the request for it and the OIC-proposed draft resolution were entirely one-sided, speaking only of alleged Israeli violations, while completely ignoring the Hamas government's role—not only in the June 25 incident that that precipitated the Gaza crisis,<sup>30</sup> but also in deliberately attacking Israeli civilians. The session itself, held on July 5 and 6, consisted primarily of anti-Israel diatribes by Arab and Islamic states, including the spectacle of Sudan accusing others of “war crimes.”

A Swiss attempt to insert balancing language referring to the conduct and obligations of “Palestinian armed groups” into the OIC draft was rejected, and the resolution passed by a vote of 29–11–5. The 11 No's came from the same democratic alliance of countries who had opposed the previous Friday's anti-Israel resolution minus Switzerland, which abstained this time.<sup>31</sup> In addition to condemning Israel alone for the Gaza crisis, the resolution demands an “urgent fact-finding mission” to the area led by the Special Rapporteur on Palestine, John Dugard—whose anti-Israel bias is, even by UN standards, particularly virulent.<sup>32</sup>

### 3. *The Second Special Session*

After Hezbollah sparked another crisis on July 12, with what Secretary-General Annan described as a provocative attack on Israel, the Arab League and the OIC, supported by 16 Council members,<sup>33</sup> convened another special Council session. This session was held on August 11.<sup>34</sup> Again, both the request and the OIC-proposed draft resolution referenced Israeli actions and violations alone. No mention was made of Hezbollah's incursion into Israel to murder and kidnap Israeli soldiers, its firing of thousands of rockets, packed with ball bearings to maximize casualties, at Israeli civilians, or its use of Lebanese civilians as human shields.

In addition to being politically-motivated and one-sided, this special session seemingly violated the UN Charter's principles of separation of powers. Because the Security Council was already dealing with the Lebanon crisis, Article 12 of the Charter dictates that the Human Rights Council, as a subsidiary of the General Assembly, should not have entered the fray. Also, as a matter of common sense, the session risked complicating the delicate negotiations then underway in New York.

<sup>28</sup> UN Watch and other NGO's objected to this. See

<sup>29</sup> The members supporting the request were: Algeria, Azerbaijan, Bahrain, Bangladesh, Brazil, China, Cuba, Gabon, India, Indonesia, Jordan, Malaysia, Mali, Morocco, Pakistan, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, and Tunisia.

<sup>30</sup> Hamas tunneled into Israeli territory from Gaza and murdered and kidnapped Israeli soldiers.

<sup>31</sup> The vote count was:

Yes (29): Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, China, Cuba, Ecuador, Ghana, Guatemala, India, Indonesia, Jordan, Malaysia, Mali, Mauritius, Morocco, Pakistan, Peru, Philippines, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Tunisia, Uruguay, Zambia.

No (11): Canada, Czech Republic, Finland, France, Germany, Netherlands, Japan, Poland, Romania, Ukraine, United Kingdom.

Abstain (5): Cameroon, Mexico, Nigeria, South Korea, Switzerland.

Absent (2): Djibouti, Gabon.

<sup>32</sup> Not only does Mr. Dugard systematically ignore Palestinian acts of terror and their victims, he has gone so far as to laud Palestinian militants for their “determination, daring, and success.” He also regularly attacks the Quartet (of which the UN is a part) and the internationally-recognized Road Map as too pro-Israel. At the special session, he could not even express sympathy for the kidnapped soldier without saying he also had sympathy for “all Israel's young soldiers compelled to serve in the army of an occupying power.”

<sup>33</sup> The members supporting the special session were: Algeria, Azerbaijan, Bahrain, Bangladesh, China, Cuba, Indonesia, Jordan, Malaysia, Morocco, Pakistan, the Russian Federation, Saudi Arabia, Senegal, South Africa, and Tunisia.

<sup>34</sup> The request was made on August 7.



Again, the debate featured harsh anti-Israel speeches—with no references to Hezbollah or its sponsors<sup>35</sup> or to Israeli civilian casualties—from Islamic states and their allies. Most accused Israel of committing war crimes. Cuba accused Israel of “genocidal intent.” Tunisia, speaking on behalf of the Arab League, accused Israel of violating “all human rights.”

Again, the democratic alliance objected to the OIC draft as unfair and one-sided. Interestingly, this time Russia, despite having supported the call for the meeting, also criticized the draft, calling it “strongly worded” and “directed only at Israel, even though Israelis had suffered.” This prompted the OIC to add a sentence urging “all concerned parties” to respect international law—but still no reference to actions or violations by, or investigation of, any party other than Israel. This was enough to get Russia to vote in favor, but was insufficient for the democratic alliance.<sup>36</sup>

The OIC resolution passed 27–11–8, with the same 11 members of the democratic alliance voting no as at the first special session.<sup>37</sup> The resolution “strongly condemns the grave Israeli violations of human rights and breaches of international humanitarian law” and contemplates the urgent dispatch of a “high-level commission of inquiry” to investigate Israeli actions only.

Major international human rights NGOs, including those critical of Israel (both generally and for its actions in the Lebanon crisis), quickly and uniformly condemned the session. Amnesty International said that “members’ focus on their narrow political objectives resulted in a highly-politicised resolution that muted the Council’s voice by ignoring the violations of one party to the conflict” and that “failed to meet the principles of impartiality and objectivity expected” of the Council.

Human Rights Watch said that “the one-sided approach . . . is a blow to [the Council’s] credibility and an abdication of its responsibility to protect human rights for all. . . . Victims of human rights violations deserve better than the partisan fare that the Human Rights Council has offered so far.” Reporters Sans Frontières “condemn[ed] this use of the Council for political ends” and said that the Council, so far, had been “a repeat of the worst moments of the defunct Human Rights Commission . . . , with an automatic, blocking majority imposing its will and doing as it pleases,” that is, “exploiting human rights for political ends.” Human Rights First said that it was “deeply disappointed” by the Council’s failure to respect its mandate to be universal, impartial, objective, and non-selective.

#### 4. *The Sub-Commission and Related Bodies*

Unbalanced condemnation of Israel also marred the August session of the Council’s subsidiary, the Sub-Commission on the Promotion and Protection of Human Rights (the “Sub-Commission”), as well as the recent work of several other Geneva-based UN human rights entities.

The Sub-Commission is a body of 26 supposedly independent, impartial experts that provided “studies, research and expert advice” to the Commission. It now falls under the jurisdiction of the Council, which must decide whether, and if so in what form, it will continue to exist. On August 7, it issued a statement—drafted by the Pakistani member (a former foreign minister of leading OIC-member Pakistan)—that one-sidedly condemned Israel for “massive denial and violation of human rights in Lebanon.” The statement not only pointedly ignored Hezbollah’s role in attacking Israel and violating the human rights of Israeli civilians, but it blatantly violated the Sub-Commission’s legal mandate, which forbids it from addressing country-specific situations.<sup>38</sup> The Sub-Commission knew full well that it was violating this restriction, but went ahead anyway.<sup>39</sup>

<sup>35</sup> Algeria alone recognized that there was another party to the crisis, although it neither named that party nor described it in a manner consistent with reality: it said that Israel had attacked “a small resistance group that uses rudimentary means to defend themselves.” The Algerian representative did not mention Hezbollah’s successful use of a sea-borne cruise missile, its night-vision optical equipment or other high-tech weaponry.

<sup>36</sup> In its explanation before the vote, Russia thanked the OIC for the amendments and said that although it thought that the draft was “still not perfect,” it would nevertheless vote for it.

<sup>37</sup> The only differences from the previous special session were the following: Ghana, Guatemala, and the Philippines, which voted yes at the first session, abstained. Gabon, which was absent from the first session, abstained. Mexico, which abstained at the first session, voted yes.

<sup>38</sup> Its mandate is clear: “the Sub-Commission should not adopt country-specific resolutions, decisions or Chairperson’s statements and, in negotiating and adopting thematic resolutions or decisions, should refrain from including references to specific countries.” Commission on Human Rights Resolution 2005/53. The reason for this is because “resolutions on country situations risk duplication with the work of the Commission and creating a perception of politicization of independent experts.” Commission on Human Rights Decision 2000/106, p. 9.

<sup>39</sup> As reported in the official UN summary of the meeting: “FRANCOISE JANE HAMPSON, Sub-Commission Expert, said there were two separate issues—whether to do this, and what to



In addition, in late July, a group of the Council's Special Rapporteurs, including those on freedom of opinion and expression and on the right to "highest attainable standard of physical and mental health" issued a statement on the Lebanon crisis, despite unclear connections between some of their mandates and the situation. This statement claimed a litany of violations by Israel in Lebanon, and described at length the suffering of Lebanese civilians, yet begrudged only a mention to Israelis forced to hide in bomb shelters and said nothing at all about Israelis killed and injured. The words Hamas and Hezbollah did not appear in the statement at all.

Finally, on August 3, the Committee on the Elimination of Racial Discrimination ("CERD"), which is supposed to oversee the implementation of the 1965 International Covenant on the Elimination of All Forms of Racial Discrimination, suspended its normal work to debate "the humanitarian crisis in Lebanon." The session was initiated by a few panel members led by Mahmoud Aboul-Nasr, a former Egyptian diplomat and Arab League official. (Mr. Aboul-Nasr is notorious for his 1998 support of convicted Holocaust denier Roger Garaudy, which was roundly criticized at the time by his colleague, now CERD Chairman, Regis de Gouttes.) The session on Lebanon went ahead despite the objections of others that it threatened the body's legitimacy, being entirely outside CERD's mandate. It also was framed in a lopsided manner, so that the humanitarian suffering of Israeli civilians would be entirely ignored.<sup>40</sup>

### C. Addressing Gross Human Rights Violations

#### 1. Darfur

A major test for the new Council will be whether it acts to stop the ongoing crimes against humanity in the Darfur region of Sudan. As discussed above, the situation in Darfur was indeed addressed in the Council's first session, but only in veiled tones, evoking memories of the Commission's treatment, in March 2005, of Darfur as a matter of "Technical Cooperation." The Council failed to adopt a resolution for the victims of Darfur. Nor, despite attempts by some, could it even agree on the softer measure of a Chairman's Statement.

There were no initial plans to raise Darfur, but not to do so would have proved embarrassing once the OIC forced a substantive debate on human rights violations. That said, in relative terms for the UN, the fact that the situation was debated at all marks an improvement over the General Assembly's deplorable decision—supported by 51% of the Council's current members—to take "No Action" on Darfur in November last year. The Council members supporting inaction in the GA included Free countries like Ghana, India, Indonesia, Mali, Senegal and South Africa who, despite their membership in the Community of Democracies, have tended to vote at the UN according to regional or developing world alliances rather than on their democratic values. As Resolution 60/251 requires Council members to put the promotion and protection of human rights before UN politics, we hope these countries will vote in the future to protect human rights victims in Darfur and elsewhere, not the perpetrators.

To their credit, a few countries did make substantive statements to the Council about Darfur. Austria, on behalf of the European Union, called for "the end of impunity and of the gross and systematic human rights violations" in the region. The Netherlands called it "unacceptable that grave human rights violations continue even after Security Council resolutions." Canada, the United States, and Spain stressed that Darfur should be among the Council's priorities. Interestingly, Azerbaijan, Senegal and Mali—all current Council members and all of whom voted in favor of the 2005 No Action motion—also expressed concern about the situation in Darfur. While we hope this trend continues, the Council's overall failure to adopt any official statement for Darfur's victims is damning.

#### 2. Other Situations

As described above, only 5 substantive human rights issues were on the Council's agenda at its first session: 2 country situations (Israel and Sudan), and 3 thematic topics (the human rights of migrants; human rights defenders; and incitement to religious hatred). Some speakers, including UN High Commissioner for Human Rights Louise Arbour, urged the Council to consider more specific situations. UN Watch

do if so. *The Commission had given express instructions that the Sub-Commission was not to pass country-specific resolutions.* She had no fundamental objection to challenging this, as long as the Sub-Commission was sure of what it was doing. It was inevitable to mention the country concerned. *The Sub-Commission needed to be sure that it was breaking the rules, and was doing so at the very year that its existence was at stake [ . . . ]*" (emphasis added).

<sup>40</sup>For more details, see Hillel C. Neuer, "Where Israel Still Equals Racism," *Jerusalem Post*, August 10, 2006.



and a coalition of NGOs submitted evidence regarding many such countries, but none was addressed.<sup>41</sup> Instead, regrettably, the Council ignored gross human rights violations occurring in countries around the globe. We hope that this was due to the shortness of the initial session—only two weeks, most of which necessarily dealt with beginning to build the mechanisms of the new body—and does not indicate the approach that will be taken in future sessions.

#### *D. Establishing Effective Mechanisms*

The first Council is mandated to decide the body's agenda, working methods, and rules of procedure, including rules for participation of NGOs and other observers. It will "review, and where necessary improve and rationalize" the existing systems of independent human rights investigators (known as the Special Procedures), expert advice (the Sub-Commission), and complaints processing (the 1503 procedure). It also will create an entirely new system of universal periodic human rights review. These are vitally important elements, on which the Council's ability to address human rights problems will stand or fall.

##### *1. Preserving the Independent Human Rights Experts*

The Council voted to extend for one year the mandates of the 40-odd independent human rights experts (known as the Special Procedures) that it inherited from the Commission, to allow time for each one to be reviewed. This was a victory over objections from abuser countries like Cuba that preferred immediately to eliminate all of the country monitors. Many of these experts do excellent and important work, and should be retained.

However, as mentioned above, the resolution extending the mandates unfairly singled out the Special Rapporteur on Palestine—whose one-sided mandate is to examine alleged Israeli violations only—as the Council's only mandate with no year of expiry.

In addition, it is regrettable that among the individuals whose mandates were extended is one epitomizing the old Commission's worst aspects: Jean Ziegler, the Special Rapporteur on the Right to Food. Mr. Ziegler is a longtime apologist for dictators who has systematically abused his mandate to pursue his extremist political agenda, at the expense of hunger victims around the world.<sup>42</sup> As Mr. Ziegler had reached the six-year term limit for individual mandate-holders, the Council should have named someone else to fill this mandate pending its review.<sup>43</sup>

The Council also decided to extend, also for one year to allow for review, the largely ineffective complaints procedure and Sub-Commission.<sup>44</sup> We hope that the Council's review of these entities over the next year will lead to much-needed improvements.

##### *2. Developing a Strong Universal Periodic Review*

The universal periodic review that the Council will conduct of the human rights performance of all UN member states is its major innovation, and its best hope to save the Council from the selectivity and politicization that destroyed the Commission. Whether the system that is ultimately created will amount to more than a superficial questionnaire, however, remains to be seen.

<sup>41</sup>This *Joint NGO Statement* lists many grave situations that warrant the Council's consideration.

<sup>42</sup>Since his appointment in 2000, Mr. Ziegler, a former radical Swiss politician, has paid little or no attention to regions with actual hunger crises, instead devoting his energies to polemics against the free market, the West, the United States, and, especially, Israel. See UN Watch, *Jean Ziegler's Campaign Against America*, October 2005; UN Watch, *Blind to Burundi*, October 2004. He also has improperly used UN staff and resources to run a campaign urging a commercial boycott of Israel. His substantial ties to dictators like Moammar Khaddafi include being the co-founder, longtime vice president, and a past recipient of the "Moammar Khaddafi Human Rights Prize," an award established by the Libyan ruler in 1989 and used to reward prominent anti-American, anti-Western, and anti-Semitic individuals. See UN Watch, *Switzerland's Nominee to the UN Human Rights Council and the Moammar Khaddafi Human Rights Prize*, June 20, 2006. In addition, Mr. Ziegler is the only UN human rights expert in history to be denounced by the organization's highest officials, after he compared Israelis to Nazis, a classic manifestation of anti-Semitism as defined by the EU. "Annan slams UN official," *JTA*, July 8, 2005; "Gaza comments by rights expert irresponsible—UN," *Reuters*, July 7, 2005. *Seventy members of the U.S. Congress* also protested in letters to UN officials.

<sup>43</sup>The term limit adopted in 1999 is mandatory: "any individual's tenure in a given mandate, whether thematic or country specific, will be no more than six years." Report of the 55th Session of the Commission on Human Rights, Para. 552. The Commission expressly imposed this limit "to help maintain appropriate detachment and objectivity on the part of individual office-holders, and to ensure a regular infusion of new expertise and perspectives." *Id.*

<sup>44</sup>See Hillel C. Neuer, "Rights and Wrongs," *The New Republic*, February 18, 2005.



At its first session, the Council established a working group to begin to set up the review system. The working group will report on its progress at the upcoming September session.

### 3. Ensuring Robust NGO Participation

Resolution 60/251 states that “the participation of and consultations with observers, including . . . non governmental organizations, shall be based on arrangements including ECOSOC resolution 1996/31, and practices observed by the Commission, while ensuring the most effective contribution of these entities.” Active NGO participation was one of the Commission’s strengths, and it is a victory for human rights activists that, against the wishes of some abuser regimes, civil society’s place at the Council was assured. The “while ensuring the most effective contribution” language, however, is of continuing concern, as it seems to leave open the possibility for restrictions.

The Council’s overall record on NGO participation at its first three sessions was mixed.

On the positive side, for the first time ever, the “High Level Segment” of speeches by dignitaries during the June session’s first week made room for NGOs, represented by 5 prominent personalities.<sup>45</sup> In addition, the Council decided, significantly, to include “all stakeholders” in its year-long review of independent expert mandates and creation of the universal periodic review mechanism, ensuring that the voices of NGOs will continue to be heard on key elements of the new Council.

Also on the upside, Chairman de Alba has been accessible and attentive to NGOs, as have UN staffers, particularly the NGO Liaison Office, whose update emails and extranet of relevant documents are invaluable. Webcasts of some of the meetings during the first session also made it easier for non-Geneva NGOs to follow the proceedings. We hope that more meetings will be webcast in future sessions.

As for the negatives: First, the speaking time for joint NGO statements during the first session’s substantive debate was reduced dramatically from past levels, which prevented NGOs from fully addressing gross violations around the world.<sup>46</sup> We hope that this was an exception due to the brevity of the session, and not an indication of things to come.

Also, at the first special session, NGOs were barred completely from speaking when debate was suspended, on the Islamic group’s motion, just before civil society was slated to start. It was unclear whether this was prompted by the lengthening of the afternoon or the desire to censor speech. To its credit, the Council Secretariat afterward circulated the statements of all NGOs that were on the speakers’ list to the entire UN system, in addition to posting them on the Council extranet. NGOs were allowed to speak at the second special session a month later, so we hope that the occurrence at the first was an aberration.

Finally, repressive states continue to threaten NGOs that dare to challenge them. At one of the preparatory meetings for the June session, Syria responded to a UN Watch question that it did not like by warning that “NGOs need to be strictly monitored.” This left other NGOs scared. Given the “while ensuring effective participation language,” the outnumbered democracies on the Council who support strong civil society participation must continue to exercise vigilance.

### E. Creating a New Culture of Dialogue and Cooperation

Although much-discussed during the reform negotiations and much-trumpeted as a great strength of Resolution 60/251, it was never clear what, exactly, this “new culture” was supposed to mean. As too often happens at the UN, “dialogue and cooperation” became a catchphrase that many delegations used, but with no agreed definition, each interpreted it however it liked.

Does it mean that Council members should work together towards consensus positions? This seemed to be the idea behind having one Chairman’s Statement on all five specific human rights issues discussed at the June session, but the OIC soundly rejected such a compromise. Instead, it submitted two controversial resolutions, and then refused to engage in any negotiation over their language. Rather than dialogue and cooperation, the OIC’s approach seems to be “take it or leave it.”

Does it mean that there should be less inflammatory rhetoric and more respectful debate at Council sessions? It appears not, at least when the target is Israel or the

<sup>45</sup>The speakers—Arnold Tsungu of Zimbabwe Lawyers for Human Rights; Natasa Kandic of the Humanitarian Law Centre, Belgrade; Sunila Abeysekera of Inform, Sri Lanka; and Marta Ocampo de Vazquez, of Mothers of Plaza de Mayo, Argentina—were nominated by CONGO (the Conference of NGOs in Consultative Status with the United Nations) upon input from its members.

<sup>46</sup>See, e.g., the *June 26 statement* by UN Watch, Union Internationale des Avocats, the Transnational Radical Party and 11 other NGOs, which had to be cut short.



United States. And the unfortunate tenor of the debate was set right from the Council's start: In the first week alone, the Cuban foreign minister's vehemently anti-American diatribe was interrupted, unusually, several times for long applause,<sup>47</sup> and the disrespect toward Israel included the Syrian calling the Jewish state "an invader from the planet Mars."

Does it mean, as many delegations argued during the reform process, that there should be no "naming and shaming," that is, no criticism of specific countries? This idea was most vocally advanced by countries from the OIC, the African Group, the Asian Group and the Non-Aligned Movement—but as they quickly demonstrated, what they meant was no naming and shaming of themselves or their friends. They never had any intention of discontinuing the naming and shaming of their favorite target, Israel.<sup>48</sup>

Naming and shaming, in itself, is not the problem. In signing the Charter, all UN member states agreed to uphold certain principles, including the promotion and protection of human rights, and those violating these obligations *should* be criticized. The problem is the naming and shaming of one country over and over again, while the others get a free ride. In that regard, the Council's culture, unfortunately, is not new at all.

#### *F. Championing the UN Charter's Democratic Values*

With the liberal values of the UN Charter and the very concept of universal human rights under attack, did the democratic Council members stand up in their defense? On this, the record so far was mixed.

The threat is clear. Repressive regimes continue to seek shelter from scrutiny by invoking cultural relativism to undermine the universal application of fundamental human rights. Malaysia cited "distinct national circumstances and varying levels of development." China, boasting of its "people-centric" approach, urged consideration of "different social systems and levels of development," and argued for separate standards depending on "countries' historical, cultural and religious backgrounds and differences." That its Islamic members are attempting to morally justify their unequal treatment of women, and the Chinese their broad repression of individual freedoms, before the Council is a worrying indicator for the body's future.

There was, however, one high point of democratic vigilance and moral clarity. When it became known that Iran had sent an accused torturer and murderer as part of its delegation, Canada demanded his arrest, rightly condemning Tehran's contempt for the Council.<sup>49</sup>

But when the OIC decided to stoke the flames of outrage over the Danish cartoon incident—dismissing any balancing consideration of free speech, and providing moral justification and political support for violent protests—the West was largely silent. The EU's statement, for example, smacked of appeasement, with only a passing reference to the freedoms of expression and belief. None of the democracies at the Council was willing to proclaim that the proper response to a publication seen as objectionable, even offensive, must conform to the norms of free societies, which invite peaceful protest and public debate, and abjure all violence. In the end, however, the democratic alliance, although outnumbered, voted against the OIC resolution on this matter, which was commendable.

<sup>47</sup>The Cuban began by gloating that it was "a victory for principles and truth" and "a defeat for lies" that Cuba was a member of the Council and the United States was not. He then embarked on a long exposition of Cuba's alleged human rights virtues and the U.S.'s alleged human rights sins, including the "concentration camp" at Guantanamo Bay and U.S. support for Israel. Apparently, Cuba's position in the reform negotiations and preparatory sessions that specific countries should never be singled out for criticism in the Council does not apply when it comes to the U.S. or Israel. (Cuba voted yes on all three resolutions against Israel and supported the convening of both anti-Israel special sessions.)

<sup>48</sup>Pakistan, now the OIC chair in the Council, made this argument in the most detail. Its view was that the Council should only be able to address a country situation if there is clear, credible and reliable evidence (not just news reports) of gross and systematic human rights violations being perpetrated by or with the complicity or consent of the government. Even then, the situation should first be addressed confidentially by an expert body through dialogue and technical and financial assistance. Only if there is clear evidence that the country is not willing or able to redress the violations should the Council publicly deal with the matter. To Pakistan, gross and systematic violations meriting country-specific review mostly occur in situations of armed conflict, particularly in cases of "foreign occupation" and "suppression of self-determination" (*i.e.* by Israel). In such cases, Pakistan said, the Council should automatically dispatch fact-finding missions to assess the situation.

<sup>49</sup>Tehran prosecutor—general Said Mortazavi, a member of the delegation from Iran, has been implicated in the illegal detention, torture and murder of the Iranian-Canadian journalist Zahra Kazemi. He also has been involved in prosecuting dissident journalists, closing more than 100 newspapers, and ordering the arrest and detention of bloggers.



## IV. THE UPCOMING SEPTEMBER SESSION

*Sub-Commission Report*

The September session will consider the report that the Sub-Commission has prepared concerning its own future.<sup>50</sup> Not surprisingly, the Sub-Commission recommended that it continue to exist, in essentially the same form but with a new name: the Human Rights Consultative Commission (“HRCC”).<sup>51</sup> This body’s mandate would be virtually identical to the Sub-Commission’s, but with one interesting omission: the report makes no reference to continuing the ban on addressing country-specific situations that, as discussed above, the Sub-Commission recently so blatantly violated.

The Sub-Commission also recommended that the 1503 complaint procedure be continued in essentially the same form. While it did recommend two small changes—that the entire HRCC review complaints and decide which ones to refer to the Council and that the full Council consider all complaints that are referred<sup>52</sup>—these do not address the procedure’s larger problems: its closed nature and its toothlessness.

The Sub-Commission further recommended that an expert body should assist the Council with the universal periodic review, although it was split as to whether this should be the HRCC or a new, separate body.

*Universal Periodic Review*

The working group on universal periodic review will report on its progress to the Council at the September session. This report is not yet available, but the country and group position papers that have been submitted to the working group reveal several significant divides.

First, despite the mechanism’s title, its universality is already under threat. Developing countries and the Islamic group argue that the review must take into account their “level of development” and their “religious and socio-cultural specificities.” They also propose that developing countries should be reviewed less often than developed ones.

There is also a dispute over the information on which to base the review. Western countries propose that it should not require extensive new reporting, but rather use existing information from a variety of sources: UN bodies,<sup>53</sup> regional organizations, national human rights institutions, NGOs, and the concerned state. The Islamic states want state-provided information to be the main source, UN information to be secondary, and make no mention of information from NGOs.

In addition, Western states want NGOs to participate not only by providing information, but also by taking part in the so-called “interactive dialogue” sessions where the Council questions the country under examination. The Islamic group argues that NGOs should only observe.

*Special Procedures:*

At the September session, the Council will hear reports from all of the current Special Procedures, as well as the report of the working group reviewing this system. Resolution 60/251 envisions that the Special Procedures will continue to exist in some form, although it does not specify the details.<sup>54</sup>

<sup>50</sup> A/HRC/Sub.1/58/CRP.13, August 25, 2006.

<sup>51</sup> It recommended a body of either the present 26 or 28 members (1 more from Asia and one more from Eastern Europe). Seats would still be allocated regionally and members would still be nominated by states and elected by the Council. The term of membership would still be four years, and members would be able to serve for at least two terms, and possibly longer. (The Sub-Commission could not agree whether there should be a maximum number of terms.) Half the members would be elected every two years, as is the case now.

<sup>52</sup> Under the 1503 procedure, complaints went to the full Commission only after being filtered by two extremely politicized bodies: a sub-group of the Sub-Commission and then a sub-group of the Commission. See Hillel C. Neuer, “Rights and Wrongs,” *The New Republic*, February 18, 2005. Given recent events in the Sub-Commission and Council, however, it is unclear whether review of complaints by the entire HRCC and the entire Council would in fact be any less politicized and selective.

<sup>53</sup> Specifically, the treaty bodies, relevant Special Procedures, and the Office of the High Commissioner for Human Rights.

<sup>54</sup> The Resolution provides that “the Council will assume, review and where necessary improve and rationalize, all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, in order to maintain a system of special procedures, expert advice and complaint procedure.”



Abuser countries can be expected to continue to try to use the ongoing review to weaken or destroy the system.<sup>55</sup> We hope that the Council's democracies are able to defeat these efforts and ensure that the review results in a coherent and effective system of independent, impartial and expert mandate-holders.

#### V. CONCLUSION AND RECOMMENDATIONS

The Council's record so far has been a great disappointment for the cause of protecting human rights victims worldwide. All Council stake-holders—member states, the Secretary-General, the High Commissioner and other leading UN officials, NGOs and other observers—have an obligation to speak out and act forcefully against the malign subversion of the Council as detailed above. Leading NGOs, particularly after the grossly biased second special session against Israel, have begun to condemn the blatant and unrestrained abuse of the Council for political ends. All stake-holders must follow this example.

Supporters of true reform must make their voices heard in opposition to the Council's culture of anti-Israel bias, which has become a pathology challenging its basic integrity and future. They must oppose Israel's ongoing exclusion from any of the Council's regional groups, the special agenda item, and all of the other discriminatory measures described above. Likewise, they must speak out forcefully—by their votes and by their speeches—in defense of liberal democratic principles. Supporters of a credible Council should oppose the membership renewal of countries that act in a counter-productive manner.

In a word, I do not believe that we should give up. Rather, we must recognize that a truly reformed Council is an enormously uphill battle. Only by honestly identifying both its strengths and weaknesses can we move forward.

Thank you, Mr. Chairman.

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<sup>55</sup> These attempts take the form of proposals such as: outlawing country-specific mandates; requiring domestic remedies to be exhausted before an expert could consider a situation; turning over the selection of experts to the regional groups; and disqualifying people who work for or are on the governing board of NGOs from serving as experts.



## ANNEX

**Country Performance in the UN Human Rights Council  
(First Session and First and Second Special Sessions, Summer 2006)**

The tables that follow show UN Watch's assessment of the performance, to date, of the members of the United Nations Human Rights Council. We examined each country's vote on four important resolutions and its support for the convening of two special sessions, and classified its performance as constructive, counter-productive, or mixed.

We looked at two resolutions from the first session—A/HRC/1/L.15, the one-sided resolution against Israel for alleged human rights violations in Palestine, and A/HRC/1/L.16, the resolution denouncing the “incitement of religious hatred” at the expense of free speech and thought. We also considered the two unbalanced resolutions against Israel from the special sessions (S-1/Res/1 and S-2/Res/1, respectively). Each country's votes on the three anti-Israel resolutions, and its views on the two anti-Israel special sessions, reveal the extent of its commitment to the fairness and impartiality required of the Council. Each country's vote on the incitement resolution indicates its willingness to defend the liberal democratic values underpinning the entire international legal regime of human rights protection that the Council is supposed to enforce. Similarly, it reflects their determination to combat the ongoing OIC campaign to discredit democracy as blasphemy, a dangerous threat to human rights defenders in the region.

For each country, we also list the following information:

- Its rating in Freedom House's most recent global survey, *Freedom in the World 2006*. This annual study measures political rights and civil liberties worldwide and ranks countries as Free, Partly Free, or Not Free. Where applicable we also noted the Not Free countries designated as the world's most repressive by Freedom House in its 2005 special report, *The Worst of the Worst*.
- Its placement in the UN's regional group system. There are five regional groups at the UN—the African Group, the Asian Group, the Eastern European Group, the Group of Latin American and Caribbean States (GRULAC), and the Western Europe and Others Group (WEOG). Seats in most UN bodies, including the Council, are allocated by a set formula among the groups. The groups also coordinate policy positions and act as negotiation and voting blocs at the UN, including in the Council.
- Its membership(s) in other alliances that act in concert at the UN and in the Council. These include the European Union (EU), the Islamic Group (known as the Organization of the Islamic Conference, or OIC), the Arab League, and the Non-Aligned Movement.



**Constructive**

Country	Freedom House Rating	UN Regional Group	Political Alliance
Canada	Free	WEOG	
Czech Republic	Free	Eastern Europe	EU
Finland	Free	WEOG	EU
France	Free	WEOG	EU
Germany	Free	WEOG	EU
Netherlands	Free	WEOG	EU
Japan	Free	Asia	
Poland	Free	Eastern Europe	EU
Romania	Free	Eastern Europe	EU-aligned
Ukraine	Free	Eastern Europe	
United Kingdom	Free	WEOG	EU

**Mixed**

Country	Freedom House Rating	UN Regional Group	Political Alliance
Cameroon	Not Free	Africa	Islamic Group, Non-Aligned Movt.
Gabon	Partly Free	Africa	Islamic Group, Non-Aligned Movt.
Ghana	Free	Africa	Non-Aligned Movt.
Guatemala	Partly Free	GRULAC	Non-Aligned Movt.
Nigeria	Partly Free	Africa	Islamic Group, Non-Aligned Movt.
South Korea	Free	Asia	
Switzerland	Free	WEOG	

**Counter-Productive**

Country	Freedom House Rating	UN Regional Group	Political Alliance
Algeria	Not Free	Africa	Islamic Group, Arab League, Non-Aligned Movt.
Argentina	Free	GRULAC	
Azerbaijan	Not Free	Eastern Europe	Islamic Group
Bahrain	Partly Free	Asia	Islamic Group, Arab League, Non-Aligned Movt.



Bangladesh	Partly Free	Asia	Islamic Group, Non-Aligned Movt.
Brazil	Free	GRULAC	
China	Not Free, Worst of the Worst	Asia	
Cuba	Not Free, Worst of the Worst	GRULAC	Non-Aligned Movt.
Djibouti	Partly Free	Africa	Islamic Group, Arab League, Non-Aligned Movt.
Ecuador	Partly Free	GRULAC	Non-Aligned Movt.
India	Free	Asia	Non-Aligned Movt.
Indonesia	Free	Asia	Islamic Group, Non-Aligned Movt.
Jordan	Partly Free	Asia	Islamic Group, Arab League, Non-Aligned Movt.
Malaysia	Partly Free	Asia	Islamic Group, Non-Aligned Movt.
Mali	Free	Africa	Islamic Group, Non-Aligned Movt.
Mauritius	Free	Africa	Non-Aligned Movt.
Mexico	Free	GRULAC	
Morocco	Partly Free	Asia	Islamic Group, Arab League, Non-Aligned Movt.
Pakistan	Not Free	Asia	Islamic Group, Non-Aligned Movt.
Peru	Free	GRULAC	Non-Aligned Movt.
Philippines	Partly Free	Asia	Non-Aligned Movt.
Russian Federation	Not Free, Worst of the Worst	Eastern Europe	
Saudi Arabia	Not Free, Worst of the Worst	Asia	Islamic Group, Arab League, Non-Aligned Movt.
Senegal	Free	Africa	Islamic Group, Non-Aligned Movt.
South Africa	Free	Africa	Non-Aligned Movt.
Sri Lanka	Partly Free	Asia	Non-Aligned Movt.
Tunisia	Not Free	Africa	Islamic Group, Arab League, Non-Aligned Movt.
Uruguay	Free	GRULAC	
Zambia	Partly Free	Africa	Non-Aligned Movt.



**Voting Record — UN Human Rights Council Resolutions**

✓ Voted Yes  
X Voted No

Country	“Human Rights Situation in Palestine and other Occupied Arab Territories” (A/HRC/1/L.15)	(re Danish Cartoons) “Incitement to racial and religious hatred and promotion of tolerance” (A/HRC/1/L.16)	“Human rights situation in the Occupied Palestinian Territory “ (S-1/Res/1)	“The grave situation of human rights in Lebanon caused by Israeli military operations” (S-2/Res/1)
Argentina	✓	✓	✓	✓
Azerbaijan	✓	✓	✓	✓
Bahrain	✓	✓	✓	✓
Bangladesh	✓	✓	✓	✓
Brazil	✓	✓	✓	✓
Cameroon	Abstain	✓	Abstain	Abstain
Canada	X	X	X	X
China	✓	✓	✓	✓
Cuba	✓	✓	✓	✓
Czech Republic	X	X	X	X
Dubout	(not present)	(not present)	(not present)	(not present)
Ecuador	✓	✓	✓	✓
Finland	X	X	X	X
France	X	X	X	X
Gabon	✓	✓	(not present)	Abstain
Germany	X	X	X	X
Ghana	Abstain	✓	✓	Abstain
Guatemala	Abstain	✓	✓	Abstain
India	✓	✓	✓	✓
Indonesia	✓	✓	✓	✓
Japan	X	X	X	X
Jordan	✓	✓	✓	✓
Malaysia	✓	✓	✓	✓
Mali	✓	✓	✓	✓
Mauritius	✓	✓	✓	✓
Mexico	✓	✓	Abstain	✓
Morocco	✓	✓	✓	✓
Netherlands	X	X	X	X
Nigeria	Abstain	✓	Abstain	Abstain



Pakistan	✓	✓	✓	✓
Penn	✓	✓	✓	✓
Philippines	✓	✓	✓	Abstain
Poland	x	x	x	X
Republic of Korea	Abstain	Abstain	Abstain	Abstain
Romania	x	x	x	X
Russian Federation	✓	✓	✓	✓
Saudi Arabia	✓	✓	✓	✓
Senegal	✓	✓	✓	✓
South Africa	✓	✓	✓	✓
Sri Lanka	✓	✓	✓	✓
Switzerland	x	x	Abstain	Abstain
Tunisia	✓	✓	✓	✓
Ukraine	x	x	x	X
United Kingdom	x	x	x	X
Uruguay	✓	✓	✓	✓
Zambia	✓	✓	✓	✓

*\* See above for methodology.*

Mr. SMITH. Mr. Neuer, thank you very, very much.  
Ms. Windsor.



**STATEMENT OF MS. JENNIFER WINDSOR, EXECUTIVE  
DIRECTOR, FREEDOM HOUSE**

Ms. WINDSOR. Thank you, Mr. Chairman, and thank you for the opportunity to testify here today and for convening this important hearing.

As we have heard, the current situation related to the UN Human Rights Council presents a quandary for all of us who care about the restoration and strengthening of the UN's role in promoting human rights. While there has been some important progress and reform in a number of areas, there have also been some real disappointments, many of which have been laid out by my colleague from The Heritage Foundation.

This mixed record to date forces a strategic decision. Do we all distance ourselves until we are certain whether the Council will in fact deliver, or engage more actively in the hopes of doing what we can to ensure it doesn't fail?

First, while Freedom House has had very serious concerns that we have put on the public record, we believe that the potential for the Council's success is not yet lost, but that potential will be realized only if the U.S. Government and other democratic countries strengthen their efforts to engage and collaborate.

As you can see from the attachments to my testimony, perhaps the most significant positive aspect of the new Council is that a preponderance of states professing a commitment to democracy and ranked by Freedom House as free in our annual survey of freedom make up the current membership. Indeed, over 75 percent of the Council's members belong to the community of democracies.

The constraints and challenges are also obvious. The lack of more specific criteria for memberships still resulted in almost a dozen countries ranked as not free elected.

Freedom House also shares the concerns previously mentioned here today about the unbalanced focus on Israel alone in the last two special sessions while ignoring the human rights violations of non-state actors, including Hamas, Hezbollah and their state sponsors.

The Council needs to prove that it can act, and that it can live up to its potential. The effectiveness of the Council will be judged perhaps most importantly on its willingness and ability to take action, including utilizing country-specific resolutions to address the most pressing human rights violations around the world, and we endorse what the Administration—the focus that the Administration has put on that earlier today.

In terms of what the Council should focus on in terms of countries, we have released today our annual compilation of a document called "The Worst of the Worst." These are the most repressive countries in the world according to our annual survey of political rights and civil liberties that we have been doing every year for 30 years. This survey, in reference to the Congressman's earlier question related to a survey based on the Universal Declaration of Human Rights is in fact drawn from that declaration.

We believe that these situations described here represent the minimal to-do list in terms of priority country action, and I would mention in addition to the Darfur region, which has been already mentioned, the issue of North Korea, where hundreds of thousands



of citizens are held in political gulags, others face torture and arbitrary execution, as well as Burma where the military junta continues to carry out extrajudicial executions, detaining freely elected leaders, and carrying out forced relocation of ethnic minorities.

We also believe that the new procedure for removing members of the Council who commit “gross and systematic violations of human rights” must be put in place. Without any procedures put in place, there can be no action to remove Council members, and we believe that the situation in a number of member states, including China, Cuba and Saudi Arabia, clearly meet that standard for removal.

Finally, we believe that the Council needs to address a worrying trend that directly impacts the human rights situations in many countries—the number of governments that are issuing laws, regulations and taking actions designed to restrict freedom of association, assembly, and information of their own citizens. Freedom House is working with other groups to try to raise the importance and profile of this issue.

Key to the Council’s future success will be the leadership role played by the members of the community of democracies, which comprises something called the UN Democracy Caucus as you well know. To date, Democracy Caucus members have yet to adequately act on opportunities to advance human rights at the United Nations. Some of them, including, unfortunately, the current leadership, the Government of Mali, have abstained or voted against UN General Assembly resolutions on some of the worst abusers, and Council vote tallies indicate that others did not abide by their pledge to vote for those countries that met clear human rights standards.

I want to use the remaining portion of my time to address the role of the U.S. Government which, unfortunately, is not a member of the Council, having decided not to present itself as a candidate for Council membership. We believe that this has severely limited the impact and influence of the U.S. Government’s diplomatic efforts.

I want to start by saying that I have the highest respect for the two Administration officials that testified here today. They are both enormously talented professionals. But while they have persuasively outlined how the Administration has been working diligently behind the scenes, the U.S. Government has clearly missed important opportunities.

If the U.S. is to be persuasive and effective with the Council, the Administration needs to communicate clearly that the Council is a priority, and design and implement a worldwide politically fine-tuned and tirelessly carried out strategy, not just work through New York, Geneva, and other regular representatives. The U.S. has some of the most talented diplomats in the world. We are the world’s only remaining super power. Why are we continuing to fail to persuasively engage the international community in promoting human rights and fundamental freedoms at the UN?

Finally, as today’s hearings reenforce, we believe that the U.S. Congress has an important and valuable role to play in strengthening the Council. We do not believe that that role should include conditioning funding to the United Nations on the Council’s performance, which we think would in fact be counterproductive.



Rather, our energies should be devoted to encouraging a more effective, not necessarily a more bellicose diplomacy from the U.S. Government, and to raise directly with other democratic governments, many of whom request meetings with yourself and other Members of Congress, on the importance of ensuring the Council take effective action against country-specific human rights violations.

For its part, Freedom House will continue to engage in the work of the Council, particularly in facilitating the access of human rights defenders and democracy activists to that body in order to directly provide information on situations where infringements and violations of internationally recognized freedoms are occurring.

Mr. Chairman, we look forward to working together to catalyze the efforts of the U.S. Government and other democratic members of the Council to ensure that the new Human Rights Council's actions in the future restores and indeed strengthens the role of the UN in protecting human rights around the world.

Thank you very much.

[The prepared statement of Ms. Windsor follows:]

PREPARED STATEMENT OF MS. JENNIFER WINDSOR, EXECUTIVE DIRECTOR, FREEDOM HOUSE

I would like to thank the Subcommittee for the opportunity to provide testimony on this important issue.

The current situation related to the United Nations Human Rights Council presents a quandary for all of us who care about human rights and fundamental freedoms and the important and unique role to be played by the United Nations in protecting and advancing those rights and freedoms. While there has been some important progress and reform in a number of areas, there have also been some real disappointments, including in the text of General Assembly Resolution 60/251,<sup>1</sup> in the election of certain states to the Council, and in some of the actions the Council has taken since June. This mixed record to date forces a strategic decision: do we all distance ourselves until we are certain what the future will bring for the Council, or engage more actively in the hopes of doing what we can to encourage Members of the Council to take steps to reinforce its effectiveness?

While we continue to have serious concerns, Freedom House believes that the potential for the Council's success is not yet lost. We believe that the U.S. government and other democratic countries should make every effort to strengthen, not weaken, their engagement with the Council and to work together more effectively to ensure that the United Nations regains its leadership in protecting and advancing human rights and freedom.

Perhaps the most significant aspect of the new Council is the fact that for the first time in many years, a preponderance of states professing a commitment to democracy—and ranked by Freedom House as “Free” in its annual survey of freedom—make up the Council's membership. Over 75 percent of the Council's Members belong to the Community of Democracies. In addition, the elections process to the Council was more transparent and competitive than past Commission processes and a number of Members made pledges to abide by and protect human rights. In its June inaugural session, the Council took important steps, including the establishment of two working groups to develop the modalities and procedures of the Universal Periodic Review and to review mandates and mechanisms of the Special Procedures. The Council's current approach for ensuring active participation by non-governmental organizations in its proceedings should be noted and reinforced.

The constraints and challenges are also obvious. The lack of more specific criteria for membership resulted in almost a dozen countries ranked as Not Free as Members of the Council.<sup>1</sup> Three of those countries—Cuba, Saudi Arabia and China—are included in the latest ranking of Freedom House's most repressive regimes, *The Worst of the Worst*, which is being released today. We are concerned that, despite the human rights crises that exist in places like North Korea, Darfur, Uzbekistan,

<sup>1</sup>See Freedom House press release, May 25, 2006, attached, and available at [www.freedomhouse.org](http://www.freedomhouse.org).



and elsewhere, the Council has only chosen to exercise its authority for country specific action in two special sessions focusing on situations in Gaza and Lebanon, and then to pass resolutions widely seen in the human rights community as unbalanced condemnations of Israel without reference to human rights violations by Hamas or Hizbollah or the states that support them.

#### MOVING FORWARD

The Council now needs to prove that it can and will act in a constructive manner in furtherance of its mandate.

The effectiveness of the Council will be judged most importantly on its willingness and ability to take action to address country and situation-specific human rights violations. The adoption of country-specific resolutions must remain part of the tools to respond to such violations. In the upcoming session in September, the Council should focus on those situations in the world where the most serious human rights violations now occur. Freedom House has released today our annual compilation of *The Worst of the Worst*, which identifies the most repressive countries in the world according to our findings in *Freedom in the World*, our annual survey of the political rights and civil liberties around the world. We believe that these situations represent the minimal “to do” list for priority Council action. These include:

- *North Korea*, where hundreds of thousands of citizens are held in political gulags, while others face torture and arbitrary execution.
- *Burma*, where the military junta continues to carry out extrajudicial executions, to detain freely elected leaders, and to carry out forced relocation of ethnic minorities.
- The *Darfur* region of western Sudan, home to a humanitarian tragedy of major proportions, with over 400,000 deaths and millions of displaced people.

These countries are among the 8 countries (which also include Cuba, Libya, Syria, Turkmenistan, Uzbekistan, and the territories of Tibet and Chechnya) that receive the lowest possible scores in *both* of our political rights and civil liberties rankings. In addition, the *Worst of the Worst* details situations in Belarus, China, Equatorial Guinea, Eritrea, Haiti, Laos and Zimbabwe, all of which receive the lowest rating on *either* political rights or civil liberties and should be also be on the priority list for Council action.

UN General Assembly Resolution 60/251 also calls for Members of the Council to be removed by a two-thirds vote when “gross and systematic violations of human rights” occur. We believe that the situation in a number of Member states, including China, Cuba and Saudi Arabia, meet that standard. Currently, however, there are no procedures in place for removal of a Member and this should be a priority for Council action, and indeed for U.S. government leadership on this issue. This is not to say that taking action on this provision will ever be easy, similar provisions in current UN human rights treaties have not been utilized to date.

Finally, we believe that the Council needs to address a worrying global trend that directly impacts the human rights situation in many countries. As documented by the UN Special Rapporteur on Human Rights Defenders, the International Center for Not-for-Profit Law, the National Endowment for Democracy and many others, a growing number of governments in recent years are enacting legislation and regulations designed to restrict freedom of association, freedom of assembly, access to information and freedom of expression, particularly as they relate to democracy advocates and human rights defenders. In addition, many states are using extralegal measures such as harassment, intimidation and restrictions on outside funding to curb the work of nongovernmental organizations, while non-state actors are increasingly resorting to attacks on persons committed to protecting and defending fundamental freedoms. These activities contradict the Warsaw Declaration of the Community of Democracies, in addition to violating Article 20 of the Universal Declaration of Human Rights, Article 22 of the International Covenant on Civil and Political Rights and the UN Declaration on Human Rights Defenders.

#### THE RESPONSIBILITY OF DEMOCRATIC GOVERNMENTS

As was noted previously, the reformed election process for the new Human Rights Council led to Community of Democracies (CD) members representing over three-quarters of the Council Membership. The current participants of the Community of Democracies do contain some aberrations—most notably Venezuela and Russia—but this grouping represents a unique gathering of democratic member states. Leading CD members have in turn formed a UN Democracy Caucus specifically designed to work across regional lines with a common objective of strengthening the ability of the United Nations to protect and advance democracy and human rights. Freedom



House has been part of a coalition, along with the Democracy Coalition Project and the Transnational Radical Party of Italy and many others, to carry out an international campaign to create and catalyze Caucus action.

To date, the Caucus has yet to adequately act on opportunities to advance human rights at the UN, as one can see from the Democracy Coalition Project's analysis of voting records of democratic countries on country specific resolutions, as well as the outcome of the Council elections themselves.

For example, in the 2005 General Assembly meeting, Mali, the current chair and leader of the UN Democracy Caucus, along with other Caucus members, abstained from voting in favor of any of the country-specific resolutions, including those directed at some of the worst abusers mentioned above: North Korea, Uzbekistan and Turkmenistan and voted to take no action with regard to Sudan.<sup>2</sup>

With regard to the Council elections in May, the UN Democracy Caucus had pledged to give "serious consideration to countries contributing effectively to the promotion and protection of democracy and human rights worldwide in bodies which focus on elements of democratic governance" and to favor candidates that have "demonstrated a genuine commitment to human rights, both in practice and in their pledges." While balloting in the last elections was secret and actual country votes are not known, the total vote counts for countries like China, Cuba, and Saudi Arabia indicate that many Caucus members did not take their pledges seriously.

We hope that in the upcoming session this month, the Caucus demonstrates that it is willing to work in a consistent and unified manner to ensure the Council seriously addresses human rights violations in an even-handed and proactive fashion.

#### THE UNITED STATES: NEED FOR MORE EFFECTIVE ENGAGEMENT

While most of the focus of my testimony has been on the Council and its current Members, I want to use the remaining portion of my time to address the role of the United States government, which unfortunately is not a Member, having decided not to present itself as a candidate for Council membership. We believe this has severely limited the impact and influence of the U.S. government diplomatic efforts.

I want to start by saying I have the highest respect for the two Administration officials that testified here today—they are both enormously talented and are actively working within the Administration to do what they can to facilitate U.S. government engagement with the Council.

While the Administration may claim that it has been working diligently behind the scenes with our allies on human rights issues related to the Council, it has clearly missed important opportunities. It is not worth rehashing errors in U.S. strategy and tactics during Council negotiations, as they have already been well documented. But since the Council's establishment, the U.S. continues to demonstrate that engagement is not a high priority for this Administration. The U.S. was one of the only countries in the world that did not send a foreign minister or deputy foreign minister to speak at the Council's opening high-level session. The U.S. was weeks behind other countries in submitting a written statement on the important Universal Peer Review process that is being put in place in Geneva—a process which will be critical for any future Council elections. And despite the recommendation of Freedom House and many other human rights NGOs, the Administration declined to create a high-level special envoy for the Council, who could work outside—but reinforce—the able efforts of Warren Tichenor, the U.S. Ambassador to the UN in Geneva—and have the status and explicit authority to deal directly with foreign ministries in state capitals.

We all recognize that the U.S. government has a serious international image problem. If the U.S. is to be persuasive and effective with the Council, the Administration needs to communicate clearly that the Council is a priority, and design and implement a worldwide strategy, not just work through New York or Geneva representatives. This is not time for business as usual—there is too much at stake. The U.S. has some of the most talented diplomats in the world, and is the world's only remaining superpower, why are we continuing to fail to persuasively engage the international community in promoting human rights and fundamental freedoms?

Finally, as today's hearing reinforces, the U.S. Congress also has an important role to play in bringing world attention to critical human rights issues and helping to advance the objective of an effective Human Rights Council. That role should not include conditioning funding to the United Nations on the Council's performance. Rather, our energies should be devoted to encouraging a more effective—not necessarily a more bellicose—diplomacy from the United States government, and to

<sup>2</sup>For more information, see the analysis of UN Voting Patterns at the 2005 General Assembly and Scorecard prepared by the Democracy Coalition project at [www.demcoalition.org](http://www.demcoalition.org).



raise directly with other democratically elected governments—many of whom request meetings with Members of Congress—the importance of their ensuring the Council take effective action against country specific human rights violations.

#### FREEDOM HOUSE ROLE

For its part, Freedom House will continue to engage in the work of the Council, particularly in facilitating access of human rights defenders and democracy activists to that body, in order to directly provide information on situations where infringements and violations of internationally recognized freedoms are occurring. For instance, we will be present in Geneva during the forthcoming session of the Council and will hold a parallel event on attacks against freedom of association.

It is important to remember that the Council was created to replace the Commission on Human Rights because the UN Secretary General and many others recognized the previous body's inability to address the most fundamental human rights issues confronting the world. The success of the new Human Rights Council is critical not only for the advancement and protection of human rights, but for the overall credibility and effectiveness of the UN as a body.

We appreciate the opportunity to testify here today, and we will continue to work with others to raise issues and concerns directly with the U.S. government, and with democratically elected Members of the Council to ensure that the Council's actions restore—and indeed strengthen—the role of the United Nations in protecting human rights around the world.

2 Freedom House would have liked to have seen more specific criteria for membership in the establishing resolution which currently calls for Members elected to the Council to “uphold the highest standards in the promotion and protection of human rights.” We hope that a future election process would be based on a credible universal periodic review of all new candidates which would examine a country's performance against specified criteria and publish the results prior to the next electoral process. Such criteria should include:

- A government consistently demonstrating its respect for fundamental freedoms of its own citizens, which would include freedom from torture, due process, freedoms of association, information, religion, and right choose its own leaders.
- Cooperation with UN human rights bodies, including whether a government has denied entry to special rapporteurs or independent experts, and whether it has taken constructive and significant steps to remedy violations noted in past or current resolutions.
- An analysis of follow-through on specific pledges and democracy made during the May elections.
- A country's voting record been on human rights issues in the General Assembly and, where applicable, as a member of the Council. An analysis of voting records on the top ten or fifteen human rights issues, as undertaken by Democracy Coalition Project, could be seen as a credible indicator of their interest in promoting human rights.

Mr. SMITH. Ms. Windsor, thank you very much for your testimony and the work of Freedom House.

Dr. Halperin.

#### STATEMENT OF MORTON H. HALPERIN, PH.D., EXECUTIVE DIRECTOR, OPEN SOCIETY POLICY CENTER

Mr. HALPERIN. Thank you, Mr. Chairman.

I very much appreciate the opportunity to appear before this Subcommittee, and I want to commend you for holding the hearings, and I am heartened by the fact that there seems to be a consensus among all of those who have testified to the three points which I began my written statement with, and which I would ask be made part of the record.

Mr. SMITH. Without objection.

Mr. HALPERIN. And that is, first, that the UN Human Rights Council can play an important role as do other parts of the UN in



protecting those struggling for their human rights around the globe.

Second, that the early returns from the Council are at best mixed, and that, in particular, there must be deep concern about the actions against Israel, which have been widely discussed.

But that third, that it is far too soon to give up on the Council. The Council can get better and that requires American leadership, and I think despite the efforts that have been described we need more effective American leadership, and I want to come to that at the end of my testimony.

I do want to note now that the Open Society Policy Center joins the other witnesses and the Members of the Committee in condemning the one-sided attack on Israel and the failure of the Council to condemn the clear human rights violations by Hamas and Hezbollah. Also, I think one needs to express concern about the fact that special sessions were called on the Middle East, but not on Darfur when I think it is clear that the human rights situation in Darfur is deteriorating and is an urgent emergency situation.

If the United States were on the Council, I would say it should call for a special session and try to get a third of the members. We can do that anyway as a nonmember, and I would hope that we would do that because it seems to me if there ever is a need for a special session, it is for what is happening now in Darfur.

But I think as we think about the Council we need to remind ourselves about the important work that has been done and that has been mentioned by all the other witnesses, the special sessions, the special rapporteurs, the drafting of human rights standards which play an important role in affecting other governments, and the fact that the Council, as the Commission before it, is more open to NGO participation than any other part of the UN and sets a standard that I think we should seek to emulate in other parts of the UN system.

I think we need to recognize that the first session was primarily procedural, and therefore it is far too soon to say that the Universal Review, for example, cannot be effective.

As has been said, the major reason to try to change from the Commission to the Council was the fact that many members had been elected to the Commission who should not serve on it, but I think as also been noted there has been substantial progress. There is a very different election procedure and the Council is better than the Commission.

The only country I want to comment on that was elected is China. I share the concern about the election of China, and the view that China should not sit on the Council, and I am pleased to see that the Members of the Subcommittee seem to share that view. But I wonder whether you would also agree that nobody who has advocated the motion that China is entitled to a seat on the Council should be representing the United States at the UN. That is, I think, a matter of deep concern.

Let me turn finally to the question of what the United States should do in moving ahead. First, I think that we should appoint a special envoy. A number of NGOs have joined in proposing to the Secretary of State that she appoint a special envoy, not only to represent the United States at the actual Council sessions, but in be-



tween those sessions to visit the other members of the Council and to work to make it a better body.

We have not done that. It meant that we have been underrepresented in Geneva. We have been represented by an Ambassador even when other countries send their ministers to the opening session, and I think one way to clearly signal our determination to try to make the Council work is to appoint a special envoy.

Second, I think we need to do much more to invigorate the democracy caucus at the Council. Mali has not called a meeting in Geneva. I think we should be pressing them to do so.

As I have said, we should be seeking an early special session on Darfur but also seeking resolutions at the Council on countries such as North Korea and Sudan, which have currently engaged in extensive human rights violations.

Finally, it seems to me not too soon for the United States to announce that it will seek a seat on the Council at the next election, and also to begin working to get more democratic countries to seek seats on the Council. The way to defeat Cuba, as Venezuela and Iran were defeated, Saudi Arabia and others, is to get democratic countries from each region to seek the seats and to actively campaign on their behalf, and the election is not for awhile, but it is not too soon for us to begin that process.

Mr. Chairman, let me thank you again for the opportunity to appear, and of course I am prepared to answer any questions you may have.

[The prepared statement of Mr. Halperin follows:]

PREPARED STATEMENT OF MORTON H. HALPERIN, PH.D., EXECUTIVE DIRECTOR, OPEN SOCIETY POLICY CENTER

Mr. Chairman,

I appreciate the opportunity to appear before the sub-committee to present the views of the Open Society Policy Center on the new UN Human Rights Council and to suggest steps that the United States should take to improve the functioning of the Council. I want to make three basic points:

1. The UN Human Rights mechanisms including the new Council (and before that the Commission) play an important role in promoting human rights standards and in protecting those subject to human rights abuses around the globe.

2. The early actions of the new Council have sent a mixed signal, but some actions including especially the two special sessions on the Middle East must be a cause for great concern among all who care about even-handed and objective action in support of human rights.

3. It is far too soon to give up on the Council. American leadership is essential to the effective functioning of the Council, but the United States government has thus far abdicated its essential leadership of this effort.

Let me start with the second point. I will be very brief since the problem will, I am sure, be described at length by others testifying today. However, I want to leave no doubt that the Open Society Policy Center joins many other organizations including Human Rights Watch and Amnesty International, in condemning the decision of the Council to focus recent resolutions in Special Sessions exclusively on Israel and to ignore the flagrant human rights abuses by Hamas and Hezbollah which provoked the latest Middle East crisis. Special sessions are merited in a variety of circumstances, but particularly when a human rights situation significantly and rapidly deteriorates—with the immediate aim of containing the situation and preventing further abuses from taking place. Unfortunately, the resolutions that resulted from the July 5th and August 11th special sessions were widely considered to be unbalanced as they failed to address the responsibility of such actors as Hezbollah and Hamas in committing human rights abuses.

Further, the Council was unbalanced in its failure to call Special Sessions on other situations—we believe that events in Darfur meet the criteria for a Special Session and the Council should urgently take up this issue. The fact that a special session was not called for in the case of Darfur raises important concerns about the



ability of the Council to be even-handed in its decision to take action. The Commission was rightly condemned for its politicization, including its failure to condemn all human rights abuses in the Middle East, and the actions of the Council show that there is still a great deal to be done.

However, we need to keep in mind the indispensable role that the Commission played, and that the Council must play, in protecting those struggling for human rights everywhere in the world. The Council provides a forum in which human rights abuses in places such as Burma, Cuba, and Darfur can be highlighted and condemned. The special rapporteurs, both those for particular countries and those with functional responsibilities, play a key role by visiting countries engaged in human rights abuses and pressing for reforms. Other experts help draft human rights standards, which when approved by the Council or the General Assembly play an important role in motivating governments to improve their conduct. The Council also is more open than any other UN institution to the participation of civil society organizations and provides a forum for NGOs to influence the activities of the United Nations.

The debate over the creation of a new Council served to remind all of us of these important functions. One task ahead is to be sure that the new Council preserves and builds on these important achievements of the Commission. If we are to succeed in this effort and prevent further politicization of the Council, the United States must be deeply engaged. Regrettably it has not been.

The effort to create a new Human Rights Council stemmed in part from the election to the Commission of countries which were themselves significant violators of human rights. While the effort to draft new rules for the Council, and the first election to the Council, failed to completely solve this problem far greater progress was achieved than is generally understood.

The members of the Commission were elected by consensus by the Economic and Social Council—a subsidiary body of the GA—based on the recommendations of regional groups which proposed only as many candidates as they were entitled to elect. There were no agreed criteria for selection and many human rights abusers were routinely nominated and elected.

Although the human rights community did not get all the reforms that it wanted, the new rules are dramatically different. Members of the Council are elected by the General Assembly and each member must be elected directly and individually by secret ballot and must receive an absolute majority of the member states of the GA. States are advised to take account of the human rights record of those seeking election to the Council in deciding which states to vote for. The new procedures provide an opportunity to improve membership by discouraging and defeating poor candidates and encouraging states with good human rights record to participate in these competitive elections.

On May 9th, 2005 the General Assembly, using these new procedures, elected the 47 members of the new Council. Although a handful of states with poor human rights records, including two permanent members of the Security Council, were elected to the Human Rights Council—Russia, China, Pakistan, Cuba and Saudi Arabia—most of the world's worst abusers no longer serve on the body and overall membership is a significant improvement over the past Commissions.

In a dramatic break from the past, sixty-four candidates competed for the 47 seats. From every region but Africa, more countries stood for election than could be chosen, insuring a competitive election. No deadline was given, yet all candidates announced early and campaigned actively for seats. Each candidate submitted a pledge that outlined the country's qualifications for membership, and its platform for action as a Council member.

Out of the 47 members elected, 37 are members of the Community of Democracies. This is a far higher percentage than was ever elected to the Commission and represents an opportunity for democratic member states to work within the Democracy Caucus across regional lines to ensure a stronger and more effective Council.

The election results demonstrated that Member States voted for many candidates based on their merit, as instructed by the resolution that established the Council. Thus, Iran and Venezuela, countries with troubling human rights records, were unsuccessful in their efforts to be elected to the Council. The African bloc, which was the only one to nominate a slate, used that process to keep four human rights abusers who had previously served on the Commission—Zimbabwe, Sudan, Libya and Egypt—from seeking a seat on the Council. Similarly, former Commission members Syria and Viet Nam did not run for Asian seats.

We can and must do better in future elections, but we must not allow the election of a few countries which do not deserve to be on the Council to blind us to the substantial progress that has been made.

Let me turn finally to the question of what the United States should do.



Regrettably the actions of the American government since the recess appointment of John Bolton as the US Permanent Representative to the UN have been ineffective and counter-productive.

Great progress toward building consensus on creating an effective Human Rights Council had been made in the months leading up to the World Summit in September 2005. Among other reforms in the draft text was a provision requiring states to receive an affirmative vote of 2/3 of the members of the General Assembly to be elected to the Council.

When he arrived at the UN with a recess appointment, Ambassador Bolton denounced the negotiating process that had produced this document and proposed 750 last-minute edits to the document, opening Pandora's box. Ambassador Bolton's proposed edits to the document and the negotiations which followed led to a much less specific endorsement of the Human Rights Council, omitting the 2/3 provision and other reforms.

When negotiations resumed on the Council, Ambassador Bolton rejected the negotiating process agreed to by all other states and held himself aloof attending only one of over thirty plenary sessions to negotiate the Council. Moreover, the United States never presented a draft resolution that it was prepared to support and left other nations in the dark about what our real position was. When the rest of the membership reached agreement on a text which incorporated many advances, the United States demonstrated how much it had lost leadership on this issue by voting no along with only three other states. The United States decision not to seek membership on the Council during the first year has further reduced our influence.

Despite calls from international human rights organizations including the American Jewish Committee, Human Rights Watch, Amnesty International USA, the Carter Center for Human Rights, Freedom House, Global Rights and Human Rights First, the United States failed to appoint a Special Envoy to the Council to advance U.S. policy objectives during this critical year. This has directly undermined U.S. influence. For example, the U.S. Ambassador to the UN in Geneva delivered an address at the historic inaugural session of the UN Human Rights Council. However, because the U.S. representative was only at Ambassadorial level, this address was delivered at a general session, not the high-level session where over 80 high or ministerial level representatives spoke. The absence of the United States from the high-level session was a glaring omission, and sent a damaging signal to the Council about U.S. priorities and commitment to strengthen the Council, notwithstanding the constructive engagement of the U.S. mission in Geneva at the working level in the activities of the Council.

On March 15, Ambassador Bolton, speaking on instructions from the State Department, told the General Assembly that the United States was committed to working, "cooperatively with other Member States to make the Council as strong and effective as it can be. We will be supportive of efforts to strengthen the Council and look forward to a serious review of the Council's structure and work." It is time to put that commitment into practice. To do that the United States should:

- Appoint a Special Envoy to represent the United States at Council sessions and in dealing with other member states on human rights issues. A Special Envoy would send an unequivocal message that the United States will continue to work actively to uphold universal human rights standards. The Special Envoy should have the diplomatic experience and credibility to work cooperatively and effectively with other democratic states to promote U.S. interests and strategically isolate spoiler states.
- Work with the government of Mali, the current chair of the democracy caucus at the UN, to activate the caucus as a means of developing a consensus of democratic states in dealing with issues before the Council. We should use meetings of the caucus to educate democratic states from the developing world about the importance of an even handed approach to the Middle East
- Seek early support in the Council for resolutions dealing with urgent human rights problems in countries such as North Korea, Burma, and Sudan regarding the Darfur region.
- Announce now that we intend to seek a seat on the Human Rights Council at the next election in the spring and urge other democratic states to also seek election.

Congress should support these efforts and should not condition funding to the Human Rights Council or the UN. Other large donor nations are committed to engaging and strengthening the Council during its inaugural years and we would only be isolated in such an effort as we were when we threatened to without funding over the question of UN reforms.



Ensuring that this new body is effective and fair in advancing human rights requires a U.S. engagement that is more than business as usual—on par with the commitment made by the United States to establish the Commission. Today, we face similar challenges, including genocide, and the new Council faces heightened expectations to accomplish growing responsibilities. The resolution to create the new Council took steps toward outlining the body's responsibilities, but critical decisions regarding how the body will review its members, address pressing human rights situations, the extent to which NGOs are allowed to engage and which mandates and procedures will be maintained, will be determined during the Council's inaugural years. The range and scope of issues to be addressed and the challenges posed by those that would seek to undermine human rights require a sophisticated and dedicated effort beyond the ordinary. The stakes for those on the front line of human rights struggles around the world is far too great for us to concede defeat at this early stage.

Mr. Chairman, allow me once again to thank you and the sub-committee and to express my willingness to answer any questions you may have.

Mr. SMITH. Thank you very much, Dr. Halperin.

You raised the subject of someone in the U.S. Mission recommending China to the Human Rights Council. Who was that?

Mr. HALPERIN. That was Ambassador Bolton who in an interview with the *Washington Post* stated his belief that all of the permanent members of the Security Council were entitled to seats on the Human Rights Council, and indeed he said on all other UN bodies, and a number of Ambassadors have commented that our effort to keep off serious human rights abuses was seriously undercut by that statement by Ambassador Bolton.

I would be glad to provide that article for the record.

Mr. SMITH. I will get the cite as soon as I go back to my office, but I thank you for raising that because I for one would agree with you wholeheartedly that it is all about performance indeed, not paper promises.

And Mr. Schaefer, I read the comment or the statement of the Chinese, their pledge, which brokers nothing. I mean, they say those kinds of things every time you meet with anyone in Beijing or any of their representatives here, including their Ambassador. The 300 policies enacted by the People's Republic of China's Congress when you get down to it are not worth the paper they are printed on because there is no transparency, there is nothing to it, unfortunately.

So thank you all. I want to thank all of you for your testimonies. I mean, they were very, very powerful. This is the first in a series of hearings. In a few months, probably late November, early December, we will hold another hearing to take another look at how well or poorly the Human Rights Council is doing, and hopefully that will continue right into next year because I would agree with all of you that we need to make this work, and so far disfunction, regrettably, is what we are seeing, and not something that victims and their advocates could be truly happy about.

Let me just ask a very brief question about the review. One of our witnesses, I think, made a very good point that violators should be first in line for that review. Would all of you agree with that—that China, Cuba, and Saudi Arabia should be first in the dock, if you will?

Ms. WINDSOR. The issue is one of tactics. There is obviously an argument for that, and as I said, those countries, I think, need to be subject to a review as fast as possible, but there is also an argument that can be made that some of the countries that are good



performers can set the standard for others by volunteering to go first so that this mechanism actually works as opposed to have it undermined right from the beginning.

So I would say that it would be useful to also have perhaps countries that you wouldn't cite, like the Czech Republic, volunteering to go first, and then comparing how they do their review and how they handle it with a country like Cuba and China and how they handle their own review.

Mr. HALPERIN. Let me.

Mr. SMITH. Yes.

Mr. HALPERIN. I think we have to pick our fights and figure out what is most sensible here. I am not sure that we are not better off waiting to set a standard by the first year or 2 of review, and have China come up later after we have refined the process and to then subject them to it in a way that we can say was set by the standards of other countries.

It would not be crazy to say that the countries that only have a 1-year term need to be reviewed first because they are only going to be on the Council for a year, and I don't think we can say in advance the bad countries should go first because the purpose of the review presumably is to find out what the human rights records are of each country. We think we know the answer to that, but I think that making the process work effectively may be more important than trying to get all the countries that we think should be first to go first.

Mr. NEUER. I think, Mr. Chairman, that in principle, having human rights violators go under review first makes sense. The problem in practice is that you and I may agree on who those violators are. At the UN, regrettably, the view is quite different. Unfortunately, when I am in Geneva when the United States is criticized, the whole room will clap. This is a concern. So it would be difficult to get the UN to agree on who those first abusers would be, and I think Jennifer made a good point that we need to strengthen the mechanism. For UN Watch, one of the greatest concerns is that we will have some sort of universal review, but as I said, it will be a questionnaire and as some other UN review mechanisms are, it will be toothless.

So as much as possible, I think, democracies need to devote attention to making this a mechanism that counts, and if it is by having some democracies go first and set a precedent for a real rigorous review, that might be a good idea.

Mr. SCHAEFER. Mr. Chairman, that was actually my suggestion. I really do think that that will be a good test to find out how determined the Council is going to be in pursuing this process. As we have seen in the United Nations many, many times, and not just in the human rights issues, but in other areas, the tendency is to try and dilute the process, water it down, become the lowest common denominator, and I expect this process to be subject to that same pressure.

Why waste time trying to hold the Czech Republic up when there are already extensive reports out there, extensive evidence, extensive documentation on the practices of a number of human rights abusers out there? And I think that it should be up to countries that have exemplary records to suggest who should go first, and



this will quickly decide and determine and illustrate how seriously the Council will take this issue.

Mr. SMITH. I appreciate that.

I would just note that one of the aspects of Manfred Nowak's report that struck me in addition to just his description of what was actually happening and the types of torture individuals are experiencing, was the noticeable fear that he detected with virtually or almost everyone he met. They did not want to tell their story because of fear of reprisals. And it seems to me for those who are in the Lao Gae today, whether they being Falangang or any other religious or political group, and are experiencing the ravages of torture, the sooner the calvary arrives that say wait a minute, this is totally uncivilized, unacceptable behavior, might have an ameliorating effect on what those torturers do.

So I would tend to agree with Mr. Schaefer. I understand and I think your points are very well taken, the other panelists. I would also point out that one of the things that Jae Jang Chang said here, I first met him in China when the Chinese Government was seeing to get Olympics 2000. He was let out briefly, then re-arrested before he was sent out of the country for humanitarian purposes, he was dying as a result of the beatings and mistreatment. He said it is counterintuitive but it was his experience in the Lao Gae, and he experienced incredible tortures, that when we were tough—we being the United States and the international community—and really spoke boldly truth to power in Beijing, the tortures eased up.

It wasn't that they retaliated. You know, you would think just the opposite, but he said it was such that when we broke bread with them and, you know, exchanged pleasantries the tortures became much more emboldened to do worse things.

So I think all your points are well taken. I think by and large I would hope that China would lead the queue in terms of analysis. That is just my view.

Let me ask you with regard to the Sub-Commission on the Promotion and Protection of Human Rights. What will be the panelist's view on whether or not that needs to be done away with, and your view on it?

Mr. NEUER. I would like to say something. I have just come from the latest Sub-Commission session and I have had the unfortunate experience of attending several Sub-Commission sessions, and I don't recommend it to someone who cares about human rights.

You know, last week, and in the past few weeks, we have seen Saddam Hussein on trial for the genocidal gassing of Kurds in Halabaja. Well, those who know Sub-Commission history will know that in the 1980s, when someone tried to condemn Saddam for these crimes around the time they were happening, two members, Halima Warzazi of Morocco, and Alfonzo Martinez of Cuba, and others put forward a no action motion to kill an attempt to stop Saddam. They shielded Saddam as he was gassing the Kurds of Halabaja.

Those two members sit on the Sub-Commission today and they have been there for decades. Those are the types of people—not all, we have excellent American members and some others—but unfortunately these agents of oppressive regimes dominate the Sub-



Commission, and it has been an agent for many misdeeds. Halima Warzazi, 2 years ago, began a session by comparing Israelis to Nazis, and this is sort of typical of what the Sub-Commission does.

The Sub-Commission that I have seen, unfortunately, has failed its mandate to protect human rights, and does not deserve to last any longer.

Mr. SCHAEFER. I have nothing to add to that.

Mr. SMITH. In terms of definitions, if you could give your views on if you believe, each one of you, and if you could answer this, as to what the Human Rights Council construes to be human rights? Should it be treaties freely entered into and ratified by states, or should it be statements made at conferences which very often were undemocratic, at least in my view in many case? How do we define human rights? Dr. Halperin?

Mr. HALPERIN. Well, first of all, Mr. Chairman, as you are aware there is a treaty on economic and social rights as well as on political and civil rights. So those of us who think that political and civil rights deserve a special place in the patheum as OSI does, nevertheless can't win that argument by saying just focus on treaty rights, because we have the second treaty as well.

But I do want to say there is another body of rights that I think is very important, and that is as I mentioned in my testimony, the standards that have come out of the work of special rapporteurs of the Human Rights Commission and now hopefully the Council, which are then in some cases endorsed by the General Assembly, and in some cases endorsed by the Human Rights Commission.

Those play an important role in the internal debates in countries about their obligations to deal with human rights problems, and while they are not treaties, they are developed through an expert process, and I think play an important role.

In the same way, I would say the Warsaw Declaration, which created the community of democracies and committed its members to join the democracy caucus, is a useful document.

So while I agree that treaties should get the highest attention, it doesn't help us particularly with the conflict between political and civil rights, and we need to recognize that there are other kinds of resolutions that play a very important role in the struggles that people have in individual countries to get their rights, and we should not derogate them in a way that makes it harder for them to use those documents.

Ms. WINDSOR. Well, Freedom House is quite clear about what we think should be the focus in terms of fundamental freedoms. We focus on political rights and civil liberties, and we believe that that should be the Council's focus.

In terms of other bodies, I think that the issue again is one of focus and dilution, and it has been a strategy that has been implemented in many, many bodies around the world to try to dilute and add other important issues that are important for development for humanitarian reasons, in a way to sort of step back from that.

And I want to include another important right that I think is implicit in a lot of the treaties and particularly in the human rights defender treaty, which is the right of freedom of association and the right to assist those who are actively trying to exercise their freedom of association in their own country. Again, I think it is



very important that we move from beyond the right to protect to the right to assist those people that are actually struggling for fundamental human rights, civil and political rights in their countries, and we need to assert that much more forcefully.

Mr. NEUER. Mr. Chairman, I think it was mentioned before by Dr. Lagon that regrettably too often the reference to economic and social rights is used as a pretext to divert attention from failures to respect basic and civil and political rights, and this is a trend that we see.

One tends to see economic and social rights cited not by governments that wish to be held accountable themselves, but it is a question of what is owing to the government, and when we speak about human rights, whether it is civil or political rights, or even at the UN of economic and social rights, the question always ought to be what is owing to the individual. Too often the governments invoke economic and social rights not as whether they will give food and water to their own people, but rather what others, whether it is the West or the international community owe, and again as a diversion to their own failures to respect basic democratic rights. It is something that we see and we ought to be mindful of and combat.

Mr. SCHAEFER. A lot of what I was going to say has already been said, especially the issue about the diversionary tactic of using the economic, social and cultural issues to try and divert attention away from the political and civil issues.

I certainly agree with the Chairman's opening statement wherein states sign treaties, they implement treaties, and they adopt treaties by the processes of their governments in the way that they have agreed to be done, and those nations should be held accountable for their own decisions to adopt those obligations.

But the effort that seems to be going on in any cases is to try and elevate norms or standards that have not necessarily been agreed to, and are developed in a very ill-defined and ambiguous fashion that evolves over time, and I think that it is very concerning that this process is going on, and that the United States in particular, as the nation that I live in and the nation that I live under as far as its laws are concerned, has to be aware of and to be concerned about.

Mr. SMITH. Let me ask you a question. In my opening, I mentioned the issue of abortion, which is obviously very divisive. It is one that reasonable people can be found on both sides of the issue, at least I believe that, but it is also one that I think respect for the unborn is an idea whose time is coming. It hasn't come yet, but like Victor Hugo said nothing is more compelling as an idea whose time has come, and it is because of modern science, ultrasounds, diagnostic techniques, and prenatal surgery, which is doing incredibly useful things on behalf of unborn children that in the past—I chaired the Spina Bifida Caucus in the House, and prenatal surgery now is causing many of those kids who would have less of a quality of life to have a tremendous life ahead of them because of the surgery done while they were still in utero.

What got me personally into the human rights issues 30 years ago was the right to life issue, and all of the rest is built upon that.



If you have a right to life, and all the other religion naturally flow from that.

My question is what do you think the position should be of the Human Rights Council? I contend and others can disagree that many of the very important treaty bodies have misused their mandates to browbeat and cower countries who do listen to the UN much more than the United States perhaps might to look at their laws as they relate to respecting life and to reverse?

I believe that abortion is violence against children. Some of you may disagree. I don't know that. But I do believe that the very methods of abortion, chemical poisoning and dismemberment are acts of violence. There is no way to call it benign or compassionate for the child when that is occurring, and I do believe we do need to protect both mother and child, and to provide protections, pregnancy care centers and the like.

Having said that, the Human Rights Council, I think, could become very much more controversial and its work undermined if it were to embrace abortion as an additional mandate. Right now it is all this—the Convention on the Elimination of All Forms of Discrimination against Women, I have read many of their reports, and I have also read their documents, their treaties as well as the protocol. Nowhere does it even remotely suggest that abortion is a right, and yet by usage on the part of some of the experts they try to suggest that that is the case.

I think this would hurt and undercut the Human Rights Council's work. I would be interested in knowing what you think. Who would like to go first? Dr. Halperin?

Mr. HALPERIN. It is not something that I have thought about so I think I should pass on that now.

Mr. SMITH. Okay.

Mr. SMITH. Ms. Windsor.

Ms. WINDSOR. I can just attest since I actually attended the 1996 Cairo conference that if they took on this issue it would in fact stop action on all other issues.

Mr. SMITH. Okay, I will conclude on that remark. I was at Cairo as well, and one of the provisions in Cairo was that it is up to the Federal Governments to decide that.

I would also just finally point out that Martin Luther King's niece, Alveda King, has had two abortions, and now is a passionate defender of the unborn child. She makes the point, she is a part of a group called Silent No More, that there are two victims in every abortion, both the mother and the baby, and we need to recognize the longer term deleterious effects to women, particularly psychologically and emotionally. I appreciate your comments.

Let me just conclude by asking any of you if there is any other recommendations that you might make. Your testimonies were outstanding for the Congress because, again, this is part of an ongoing review and many Members are concerned about this. Any final comment?

Mr. SCHAEFER. Yes. I would just like to add because this subject has come up in the testimonies before about the decision for the United States to run for a seat on the Council and the prospect of doing that in the future.



The recent votes in the special session and in the recent session in June reveal that just simply having the United States on the Council is not going to affect the outcome of the various votes. The U.S. can't do it alone. The Council's future depends on the determination of the member states on the Council to act in concert to do the right thing, in essence.

The U.S. decision not to run places the onus specifically on the other member states to do something. It is all too often in the United Nations system that you have the United States set up as one party, and then everybody else set up as the other party, and even when states are like-minded and agree with the United States on an issue, all too often that support disappears or evaporates when push comes to shove and the votes are taken.

In this process, it is too important for the other member states to really step forward and act to support the various positions in this Council in order for it to be effective. And so we need to know, the United States needs to know whether the other Council members are willing to step up and take this burden and accept the responsibility for what is going on to make the Council more effective than its predecessor.

By running for a seat without knowing this, the U.S. unduly lends credibility to the Council when in fact it may not deserve that credibility. The U.S. can participate in the process through either making statements, making pronouncements or working through other like-minded states on the Council, and this process right now I think is very malleable. We need to make sure that the Council evolves in a way that is going to be productive, and by prematurely announcing that the U.S. is going to run for a seat you are removing a lot of pressure for that outcome.

Mr. NEUER. Mr. Chairman, in the reports released today by UN Watch there are several recommendations and I will just mention a few. One of them is to take action against human rights violators. As I mentioned in my testimony, not a single member state had declared its intention to introduce any resolution on any specific violation. The only standing commitment to do so, of course, is the political resolutions targeting Israel.

So we encourage democracies to announce now that they will take specific action, whether it is against Burma or North Korea in defense of human rights victims there, country-specific resolutions and where appropriate, special sessions. That is number one.

Number two, protect democratic values. I mentioned we have a democratic alliance of only 11 of 47 states that can be relied upon to stand up for democratic values and vote the right way, the way democracies ought to. We need to expand that group. We don't have a magic answer for that, but, to begin with, these 11 democratic countries need to reach out to the South American countries who are not voting like democracies, and leading NGOs to play, to cite those countries that are voting with the Cubas and the Chinas and the Saudi Arabias, and we need to help them overcome political pressure, to chose the side of democracy.

Just two others. Many democratic countries have come to the defense of NGOs. We need to continue to do that. And in the preliminary session in May or June, the Syrian representative said NGOs need to be "strictly monitored," and we did not get a response from



any democratic country in the plenary to say NGOs need to have their participation strengthened. So democratic countries need to continue and increase standing up for NGOs.

Finally, regarding the one-sided obsession with Israel, I note that three leading NGOs—Amnesty International, Human Rights Watch and Reporters Sans Frontières—last month took important stands against the actions that they said were highly politicized, one-sided, and exploit human rights for political ends. We salute those NGOs for taking those stands and encourage them, they are extremely influential, to continue to tell the truth and to try to save the Council from the abuses.

One part of this which has not been mentioned yet today is the regional group segregation. When the Council began, before there was any resolution or any statement whatsoever, Israel was the only country, as it was in the Commission, excluded from any of the five regional groups. The regional groups are vital for participation. This segregation has to end. Kofi Annan has called it an anomaly, but we haven't seen action in Geneva. And so we call on Secretary-General Kofi Annan to ask the High Commissioner, Louise Arbour, to lead the effort in Geneva, publicly and privately, to end this denial of basic equality at the Council. And we note that the Western group at the General Assembly in New York does include Israel since the year 2000, and logically it should do so at the Council, which is, of course, a GA subsidiary body.

Ms. WINDSOR. Thank you. Just first of all, I would say I really think that the Universal Periodic Review needs to publish its findings. Whatever kind of mechanism it comes up to actually publish what the findings are I think will have a very, very important role to play.

Two, utilization of procedures, I urge the Council to utilize its procedures for removal of its members. I want to say that all seven major human rights treaties have such procedures currently, and they have never in fact been utilized in a state-to-state mechanism.

I also would mention that the U.S. Government also has such a provision for citing countries as gross and systematic human rights abusers under section 502[b] and 116, and it has never been utilized. So we need to follow up, I think, on those procedures.

On the last issue related to my colleague's comments on engagement, we did a study of U.S. leadership at the United Nations along with the Council on Foreign Relations in 2002, and your colleague Representative David Drier co-chaired that Council with then-retired Representative Lee Hamilton.

We had everybody from all sides of the table on the United Nations, and what they all agreed on is that the United Nations is a political body—perhaps the best analogy is the U.S. Congress. What I would ask you is if you wanted your fellow members to take action, would you just wait and see if they do the wrong thing, or would you try to persuade them?

Mr. HALPERIN. I want to underscore that point, Mr. Chairman. I agree with my former boss, Secretary Albright, that the United States is the indispensable nation. It is fine to say we use this as a test of whether the European Union or the Latin American democracies will step up to the plate, but we do that at the expense of the people around the world struggling to protect their human



rights, and to expand their freedoms and democracy, and I don't think that that is an appropriate tradeoff to make.

The UN Human Rights Council will be more effective if we are there, if we are embarrassing people by standing up when Syria says NGOs should be controlled. If nobody else will do it, we should do it, and if nobody will call a special session on Darfur, we should call it. And if nobody will lead the struggle to say that Chinese human rights violations should be condemned, we should lead that struggle, and we can't effectively lead it unless we are on the Council.

If the Council fails, there will be plenty of people to say that and plenty of opportunity for recriminations, but we should be the human rights leader of the world. We are the human rights leader of the world. And when we say we are stepping back to see whether it works, that unfortunately doesn't encourage others to take the lead. It encourages others to say, well, if the U.S. doesn't consider this an important venue, then why should we stick our neck out and get attacked?

So I think that it was a mistake for us not to run the first time. We ought to run now, and we ought to play a leadership role and not let the Council get away with the kinds of things that it has gotten away with in the first session because we were not there.

I would also say I would urge you to work with your colleagues to continue to supply support to the Council. Threatening to cut off the funds or cutting off the funds would only backfire and make it impossible for the U.S. to exercise its leadership, and I think we always have to remember that what is involved here is the people struggling for human rights around the world, the Chinese, the Cubans, people in Darfur and others, and that is where I think our first allegiance ought to be in making these decisions.

Mr. SMITH. I want to thank this extraordinary panel for your insights. These views will be widely disseminated on Capitol Hill. I would note for the record and ask unanimous consent that a letter I wrote along with Chairman Hyde be included in the record at this point.

[The information referred to follows:]



[illegible]
$$\begin{aligned} \mathcal{L}_{\text{reg}} &= \frac{1}{2} \sum_{i=1}^n \left( \frac{\| \mathbf{y}_i - \mathbf{f}_i \|^2}{\sigma_i^2} + \lambda \left( \|\mathbf{w}\|_1 + \|\mathbf{b}\|_1 \right) \right) \\ \mathbf{w} &= \mathbf{w}_0 + \mathbf{w}_1 + \dots + \mathbf{w}_n \\ \mathbf{b} &= \mathbf{b}_0 + \mathbf{b}_1 + \dots + \mathbf{b}_n \end{aligned}$$

Via Facsimile  
The Honorable Condoleezza Rice  
The Secretary of State  
U.S. Department of State  
2201 C. Street, N.W.  
Washington, D.C. 20520

Dear Madam Secretary:

One Hundred Ninth Congress

House of Representatives  
Washington, DC 20515

(202) 225-5021

[http://www.house.gov/international\\_relations/](http://www.house.gov/international_relations/)

March 28, 2006

[illegible]

1. *Pharmaceuticals*: The pharmaceutical industry is a major contributor to the U.S. economy, with sales exceeding \$400 billion in 2019. The industry is heavily regulated by the FDA, which oversees the safety, efficacy, and quality of drugs. The industry is also facing increasing pressure to reduce costs and improve access to medicines.

[illegible]

We are writing to express our firm conviction that the United States should present its candidacy for the new Human Rights Council and make every effort to be elected on May 9<sup>th</sup>.

Yesterday, we visited United Nations headquarters in New York as part of a delegation from the House Committee on International Relations. In the course of our discussions with Secretary General Kofi Annan, Ambassador John Bolton, other permanent representatives from various countries, and the media, we heard repeatedly of the need for the United States to be engaged with the Human Rights Council.

Numerous elements of the Council are weak and deeply flawed. The majority requirement for elections, as opposed to two-thirds, will open the door to possible membership by notorious human rights violators. The Western Regional Group will be less influential with fewer votes. Special sessions targeting Israel, the United States and other countries can be called by only one-third of the Council's membership. And the new Council is mandated to promote the goals and commitments "emanating" from United Nations conferences and summits, which will potentially lead to the treatment of ill-conceived and defined policy measures on the same par as human rights treaty obligations. Thus, it remains to be seen whether the Council will be a meaningful improvement over the Commission on Human Rights.

Yet despite these serious considerations, and arguably because of them, we agree that it will be important for the United States to be a member in the Council's initial phase. Our participation is also important to demonstrate that the United States has no intention of isolating itself on the critical issue of international human rights. While it is important for the United States to take a firm and principled position on the necessity of achieving authentic reform at the United Nations, such a strategy must not be pursued at the cost of excluding the United States from on-going negotiations and developments.

Sincerely,

Henry Hyde  
HENRY HYDE  
Chairman  
Committee on International Relations

  
CHRISTOPHER H. SMITH  
Vice-Chairman  
Committee on International Relations



Mr. SMITH. Even if we have serious problems with what is going on, I think the U.S. needs to be involved in the UN Human Rights Council. Your point is well taken, Mr. Halperin, although I certainly understand Mr. Schaefer's point as well.

Thank you all so much. We look forward to hearing from you in the future, as we will be holding follow-up hearings to this one.

The hearing is adjourned.

[Whereupon, at 4:26 p.m., the Subcommittee was adjourned.]



## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE JEFF FORTENBERRY, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. Chairman, thank you for focusing our efforts today on the United Nations Human Rights Council. I appreciate the hard work that went into this hearing and your efforts to keep the issue of human rights central to the work of this Subcommittee and to our consideration of U.N. reform.

I look forward to hearing from our distinguished witnesses, and commend them for working to keep governments cognizant of the duty to provide fundamental justice and uphold human dignity for the people subject to their authority, especially for the world's most vulnerable and marginalized persons.

I believe that it is critical for the U.N. Human Rights Council to diligently and objectively uphold the principles enshrined in the Universal Declaration of Human Rights. While I fully understand the concerns which led the United States to vote against the resolution to replace the widely discredited Human Rights Commission with the Council, I am confident that we remain vigilant in our cooperation with Council members in an observer capacity to further our nation's longstanding commitment to an authentic and credible human rights agenda in the United Nations.

It is also my understanding that the United States may consider running for the Council in 2007, and I am eager to hear the testimony and assessment of our witnesses as to whether 'reform' or 'regression' best describes the Council's activities to date and how they envision the prospects for future U.S. participation on the Council.

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# Human Rights Council

Special session resolution S-1/Res.1.

Human rights situation in the  
Occupied Palestinian Territory

*The Human Rights Council,*

*Guided by the principles and objectives of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights,*

*Affirming the applicability of the Geneva Convention relative to the Protection of Civil Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to other occupied Arab territories,*

*Expressing deep concern at the breaches by Israel, the occupying Power, of international humanitarian law and human rights law in the Occupied Palestinian Territory, including the arbitrary arrest of Palestinian ministers, members of the Palestinian Legislative Council and other officials, as well as the arbitrary arrest of other civilians, the military attacks against Palestinian ministries, including the office of the Premier, and the destruction of Palestinian infrastructure, including water networks, power plants and bridges,*

1. *Expresses grave concern at the violations of the human rights of the Palestinian people caused by the Israeli occupation, including the current extensive Israeli military operations against Palestinians in the Occupied Palestinian Territory;*

2. *Demands that Israel, the occupying Power, end its military operations in the Occupied Palestinian Territory, abide scrupulously by the provisions of international humanitarian law and human rights law, and refrain from imposing collective punishment on Palestinian civilians;*



3. *Expresses grave concern* at the detrimental impact of the current Israeli military operation on the already deteriorating humanitarian conditions of the Palestinian people;

4. *Urges* Israel, the occupying Power, to immediately release the arrested Palestinian ministers, members of the Palestinian Legislative Council and other officials, as well as all other arrested Palestinian civilians;

5. *Urges* all concerned parties to respect the rules of international humanitarian law, to refrain from violence against the civilian population and to treat under all circumstances all detained combatants and civilians in accordance with the Geneva Conventions;

6. *Decides* to dispatch an urgent fact-finding mission headed by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967;

7. *Calls* for a negotiated solution to the current crisis.

*2nd meeting  
6 July 2006*

[Adopted by a recorded vote of 29 votes to 11 with 5 abstentions. The voting was as follows:

<i>In favour:</i>	Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, China, Cuba, Ecuador, Ghana, Guatemala, India, Indonesia, Jordan, Malaysia, Mali, Mauritius, Morocco, Pakistan, Peru, Philippines, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Tunisia, Uruguay, Zambia.
<i>Abstaining:</i>	Cameroon, Mexico, Nigeria, Republic of Korea, Switzerland.
<i>Against:</i>	Canada, Czech Republic, Finland, France, Germany, Japan, Netherlands, Poland, Romania, Ukraine, United Kingdom of Great Britain and Northern Ireland.]

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**Human Rights Council**

**Special session resolution S-2/1. The grave situation of human rights in Lebanon caused by Israeli military operations**

*The Human Rights Council,*

*Reaffirming* the purposes and principles contained in the Charter of the United Nations,

*Reaffirming also* the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action, and recalling the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and other human rights instruments,

*Acknowledging* that peace and security, development and human rights are the pillars of the United Nations system,

*Recalling* General Assembly resolution 60/251 of 15 March 2006 in which the Assembly decided that the Human Rights Council:

- (a) Should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon; and
- (b) Shall respond promptly to human rights emergencies,

*Guided* by the Charter of the United Nations, relevant human rights instruments and international humanitarian law, in particular the Hague Conventions of 1899 and 1907 on the Laws and Customs of War on Land which prohibit attacks and bombardment of civilian populations and objects and lay down obligations for general protection against dangers arising from military operations against civilian objects, hospitals, relief materials and means of transportation,



*Recalling* the commitments of the High Contracting Parties to the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto,

*Reaffirming* that each High Contracting Party to the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) is under obligation to take action against persons alleged to have committed or to have ordered the commission of grave breaches of the Convention, and recalling the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity,

*Emphasizing* that human rights law and international humanitarian law are complementary and mutually reinforcing,

*Stressing* that the right to life constitutes the most fundamental of all human rights,

*Condemning* Israeli military operations in Lebanon, which constitute gross and systematic human rights violations of the Lebanese people,

*Appalled* at the massive violations of the human rights of the people of Lebanon by Israel resulting in the massacre of thousands of civilians, injuries, extensive damage to civilian infrastructure, displacement of 1 million people, and outflows of refugees fleeing heavy shelling and bombardment against the civilian population,

*Strongly condemning* the indiscriminate and massive Israeli air strikes, in particular on the village of Qana on 30 July 2006, and the targeting of United Nations peacekeepers at the United Nations observer post in southern Lebanon on 25 July 2006,

*Taking note* of the strong condemnation by the United Nations High Commissioner for Human Rights of the killing of civilians in Qana, her call to take



measures to protect civilian lives and civilian objects and her reiteration of the need for independent investigation, with the involvement of international experts,

*Noting the extreme concern* expressed by the Representative of the Secretary-General on human rights of internally displaced persons, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the Special Rapporteur on the right to food about the continuing adverse impact on the human rights and the humanitarian situation of the civilian population in Lebanon,

*Emphasizing* that attacks and killings of innocent civilians and the destruction of houses, property and infrastructure in Lebanon are a breach of the principles of the Charter of the United Nations, international law and international humanitarian law as well as are flagrant violations of human rights,

*Recognizing* the urgent need to address the dire humanitarian situation in Lebanon, including through the immediate lifting of the blockade of Lebanon imposed by Israel,

*Noting with concern* the environmental degradation caused by Israeli strikes against power plants and their adverse impact on health,

*Concerned* at the targeting of the communication and media networks in Lebanon,

*Outraged* at the continuing senseless killings by Israel, with impunity, of children, women, the elderly and other civilians in Lebanon,

1. *Strongly condemns* the grave Israeli violations of human rights and breaches of international humanitarian law in Lebanon;

2. *Condemns* the massive bombardment of Lebanese civilian populations, especially the massacres in Qana, Marwaheen, Al Duweir, Al Bayadah, Al Qaa,



Chiyah, Ghazieh and other towns of Lebanon, causing thousands of deaths and injuries, mostly among children and women, and the displacement of 1 million civilians, according to a preliminary assessment, thus exacerbating the magnitude of the human suffering of the Lebanese;

3. *Also condemns* the Israeli bombardment of vital civilian infrastructure resulting in extensive destruction and heavy damage to public and private properties;

4. *Calls upon* Israel to abide, immediately and scrupulously, by its obligations under human rights law, in particular the Convention on the Rights of the Child, and international humanitarian law;

5. *Urges* all concerned parties to respect the rules of international humanitarian law, to refrain from violence against the civilian population and to treat under all circumstances all detained combatants and civilians in accordance with the Geneva Conventions of 12 August 1949;

6. *Calls upon* Israel to immediately stop military operations against the civilian population and civilian objects resulting in death and destruction and serious violations of human rights;

7. *Decides* to urgently establish and immediately dispatch a high-level commission of inquiry comprising of eminent experts on human rights law and international humanitarian law, including the possibility of inviting the relevant United Nations special procedures to be nominated to the Commission:

(a) To investigate the systematic targeting and killings of civilians by Israel in Lebanon;

(b) To examine the types of weapons used by Israel and their conformity with international law;

(c) To assess the extent and deadly impact of Israeli attacks on human life, property, critical infrastructure and the environment;

8. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to provide all administrative, technical and logistical



assistance required to enable the Commission of Inquiry to fulfil its mandate promptly and efficiently;

9. *Calls upon* the international community urgently to provide the Government of Lebanon with humanitarian and financial assistance to enable it to deal with the worsening humanitarian disaster, rehabilitation of victims, return of displaced persons and restoration of the essential infrastructure;

10. *Requests* the Commission of Inquiry to report to the Council no later than 1 September 2006 on progress made towards the fulfilment of its mandate.

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*3rd meeting  
11 August 2006*

[Adopted by a recorded vote of 27 votes to 11 with 8 abstentions. The voting was as follows:

<i>In favour:</i>	Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, China, Cuba, Ecuador, India, Indonesia, Jordan, Malaysia, Mali, Mauritius, Mexico, Morocco, Pakistan, Peru, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Tunisia, Uruguay, Zambia.
<i>Against:</i>	Canada, Czech Republic, Finland, France, Germany, Japan, Netherlands, Poland, Romania, Ukraine, United Kingdom of Great Britain and Northern Ireland.
<i>Abstaining:</i>	Cameroon, Gabon, Ghana, Guatemala, Nigeria, Philippines, Republic of Korea, Switzerland.]

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SWITZERLAND'S NOMINEE TO THE UN HUMAN RIGHTS COUNCIL  
AND THE MOAMMAR KHADDAFI HUMAN RIGHTS PRIZE

A Report by UN Watch  
June 20, 2006

During the next two weeks, as well as over the next year, the eyes of the world—especially the eyes of those whose human rights are denied—will be turned toward the United Nations' new Human Rights Council. Great hopes have been raised.

Among the Council's expected actions next week will be the appointment and renewal of its human rights experts, known as the Special Procedures. Many of these experts do excellent and important work. Regrettably, however, one of the candidates for election as an expert is a man who has routinely subverted the language of human rights to serve the interests of dictators like Moammar Khaddafi.

This report—based on numerous documents (attached [here](#)), including official records of the canton of Geneva, UN materials and international news sources—reveals the leading role of Jean Ziegler, despite his denials and non-disclosures, in founding the Moammar Khaddafi Human Rights Prize, his ongoing relationship with the Prize organization in Geneva, and his own receipt of the Prize. The report also reveals how a group of interconnected organizations—co-founded and co-managed by Mr. Ziegler—have awarded the Prize and its accompanying funding to notorious racists and human rights violators, including convicted French Holocaust denier Roger Garaudy.

The human rights record of Colonel Khaddafi's regime is routinely rated by Freedom House as one of the "Worst of the Worst." Notwithstanding Libya's recent renunciation of weapons of mass destruction in return for international favor, Khaddafi continues to rule by fiat, denying freedom of the press, freedom of religion, freedom of assembly, and other basic civil rights and liberties. Security forces have the power to pass sentence without trial. Arbitrary arrest and torture are commonplace. Five Bulgarian nurses and a Palestinian doctor have been sentenced to death by firing squad, under trumped-up charges that they contaminated 400 children with HIV/AIDS. International appeals have been rejected.

If one of the new UN Human Rights Council's first actions was to be the election of an expert with substantial ties to Libya—the country whose notorious 2003 election as chair of its predecessor helped to bring about the latter's demise—the harm to the Council's credibility, legitimacy and effectiveness might be irreparable.

## I. Introduction

On April 11, 2006, an international coalition of human rights organizations, including UN Watch, sent a letter of protest to the Swiss government over its nomination of Jean Ziegler, a longtime apologist for dictators, to be an expert on the UN's human rights think-tank, the Sub-Commission for the Promotion and Protection of Human Rights, which is now part of the newly created Human Rights Council.<sup>1</sup> Among the many examples of Mr. Ziegler's support for and ties to repressive regimes, we cited with grave concern his leadership role in the founding, in 1989, of the "Moammar Khaddafi Prize for Human Rights."<sup>2</sup>

Mr. Ziegler responded by denying that he took part in creating the Khaddafi Prize and accusing UN Watch of defaming him ("The Khaddafi Prize? How could I have created it? It's absurd.")<sup>3</sup> In fact, however, our assertions were based on news articles from 1989 that clearly document Mr. Ziegler's role in founding the Prize—and their source for the information was none other than Mr. Ziegler himself. Our research also has confirmed Mr. Ziegler's ongoing relationship with the Prize entity. Although he seems unwilling to own up to it now, Mr. Ziegler is and has long been the vice-chairman of the inter-related organizations in Geneva that administer and award the Prize. This involvement appears to have been continuous up to the present, including during the time frame when he himself won, but did not disclose his relationship to, the Prize.

UN human rights experts are meant to be impartial, independent, and of high integrity.<sup>4</sup> Mr. Ziegler's conduct during his current UN mandate has not met these standards and, as the April 11 letter urged, this should disqualify him from

<sup>1</sup> NGO Statement Opposing Jean Ziegler's Nomination to new UN Post, available [here](#). The signatories include Libya Human Rights; Libya Human Rights Solidarity; Madres y Mujeres Anti-Represion por Cuba (Mothers & Women against Repression); Plantados Until Freedom and Democracy in Cuba; Vietnam Committee on Human Rights; Hope for Africa International; UN Watch; LICRA (Ligue Internationale Contre le Racisme et l'Antisémitisme); Don Bosco Ahaylam; Concerned Women for America; Endeavour Forum; Institute for Global Leadership; Women's Sports Foundation; Agence des cités pour la coopération Nord-Sud; Montagnard Foundation; Savera; Cuban Democratic Directorate; Thailand Burma Border Consortium; International Council of Jewish Women; REAL Women of Canada; and the European Council of WIZO Federations.

<sup>2</sup> An initial note regarding spelling: the Libyan leader's name is transliterated into English in many different ways. We use the version "Khaddafi," except in direct quotes where we retain the spelling used in the original source.

<sup>3</sup> "Nations Unies: Jean Ziegler au cœur d'une nouvelle polémique," *Le Matin*, 24 avril 2006 ("UN Watch en est à sa troisième campagne de diffamation contre moi. . . . Le Prix Khadafi? Comment aurais-je pu le créer? C'est absurde.") ["United Nations: Jean Ziegler at the heart of a new polemic," *Le Matin*, April 24, 2006].

<sup>4</sup> See, e.g., Commission on Human Rights Decision 2000/109 (E/CN.4/DEC/2000/109) ("In appointing mandate holders, the professional and personal qualities of the individual—expertise and experience in the area of the mandate, integrity,



appointment to a new UN position.<sup>5</sup> The additional facts that Mr. Ziegler has failed to disclose publicly, and indeed has affirmatively denied, his connections to the Libyan government-funded Khaddafi Prize, provide even more proof of the inappropriateness of this appointment.

When choosing candidates for the Sub-Commission, UN member states are supposed to “ensure that their nominees . . . are impartial and independent, [and] free from conflict of interest.”<sup>6</sup> If the Swiss government had known the facts of Mr. Ziegler’s relationship to the Libyan government-funded Khaddafi Prize and its associated Geneva organizations, we believe that it would not have nominated him for this position. Similarly, if UN member states had known these facts in March 2003, we believe that they would not have supported Mr. Ziegler’s re-appointment to a second term as the UN’s right to food expert.<sup>7</sup> The legitimacy of the UN’s system of human rights experts is premised on the experts’ independence and impartiality. In Mr. Ziegler’s case, his undisclosed Libyan connections call into question whether he meets these essential requirements.

The following text and accompanying supporting documents (available [here](#)) set forth in detail the evidence concerning Jean Ziegler’s leading role in founding the Khaddafi Prize, his ongoing relationship with the Prize organization in Geneva, and his own receipt of the Prize.

## II. The Evidence

### A. Jean Ziegler’s Role in Founding the Khaddafi Prize

The Khaddafi Human Rights Prize was awarded for the first time in April 1989—and it was Jean Ziegler who announced the event, and his own involvement with it, to the world. As reported in an April 23, 1989 *United Press International* story on the first grant of the Prize,

[Swiss] Socialist deputy Jean Ziegler said a prize foundation fund in the name of Libyan leader Moammar Gadhafi is registered in Geneva with capital of \$10 million. Annual winners will be selected and foundation capital managed by a committee of African and European politicians and intellectuals, he said. “The prize is conceived as an anti-Nobel Peace prize award for the Third World,” Ziegler said in a statement. Ziegler said committee members besides himself include Sam Nujoma, leader of the Southwest African Peoples Organization (SWAPO); Robert Charvin, honorary dean of the law faculty at Nice University in France; Nasser Cid, dean of law at Khartoum University, Sudan; and Jean-Marie Bressand, founder of the twinned cities association.<sup>8</sup>

The British newspaper *The Independent* covered the story on April 25, 1989, also citing and quoting Mr. Ziegler:

Until now, the main international peace prize has been funded by a company which manufactures explosives for weapons. If we can believe reports from Geneva, the next big award in this field will be sponsored by a regime which specialises in giving them away. According to Jean Ziegler, the socialist MP who is Switzerland’s answer to the late Abbie Hoffman, the \$250,000 prize will bear the name of Colonel Muammar Gaddafi, who has provided a \$10 million fund for it. . . . Mr. Ziegler said the award was designed to be the ‘Anti-Nobel Prize of the Third World.’ The Swiss gaily is the perfect person to represent such a foundation, as he has long been a professional Third Worlder. . . .<sup>9</sup>

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independence and impartiality will be of paramount importance.”); Report on the Meeting of Special Rapporteurs, Commission on Human Rights, 51<sup>st</sup> Session (E/CN.4/1995/5) (“Our duty is to complete our respective mandates without partiality, without being deflected by considerations such as nationality, gender, ethnic origin, race, religious creed or political opinion, and to do so with complete integrity.”). See also UN Charter, Article 101(3) (UN officials must meet “the highest standards of efficiency, competency and integrity.”).

<sup>5</sup> UN Watch has previously documented how Mr. Ziegler has systematically abused his mandate as UN Special Rapporteur on the right to food, neglecting many of the worlds’ food emergencies in order to pursue his extremist political agenda. Our reports and other information on Mr. Ziegler’s abuse of mandate are available [here](#). In addition, last year Mr. Ziegler became the only UN human rights expert in history to be denounced by the organization’s highest officials, UN Secretary-General Kofi Annan and UN High Commissioner for Human Rights Louise Arbour, after he publicly compared Israelis to Nazis. “Annan slams UN official,” *JTA*, July 8, 2005; “Gaza comments by rights expert irresponsible–UN,” *Reuters*, July 7, 2005.

<sup>6</sup> Commission on Human Rights Resolution 2005/53, para. 11(a) (E/CN.4/RES/2005/53).

<sup>7</sup> Mr. Ziegler won his second term as Special Rapporteur on a vote of 51 in favor, 1 against, 1 abstaining. Commission on Human Rights Resolution 2003/25, para. 286 (E/CN.4/RES/2003/25). The countries voting in favor were: Algeria, Argentina, Armenia, Austria, Bahrain, Belgium, Brazil, Burkina Faso, Cameroon, Canada, Chile, China, Costa Rica, Croatia, Cuba, Democratic Republic of the Congo, France, Gabon, Germany, Guatemala, India, Ireland, Japan, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Pakistan, Paraguay, Peru, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Sierra Leone, South Africa, Sri Lanka, Sudan, Swaziland, Sweden, Syrian Arab Republic, Thailand, Togo, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Viet Nam, Zimbabwe. The United States voted against, and Australia abstained.

<sup>8</sup> “Mandela receives ‘anti-Nobel’ award,” *United Press International*, April 23, 1989 (Attachment 1). All attachments are available [here](#).

<sup>9</sup> “Gaddafi Funds Peace Prize,” *The Independent Online Edition*, April 25, 1989 (Attachment 2).



An April 27, 1989 article on the issue in Switzerland's news magazine *L'Hebdo* featured Mr. Ziegler's photograph under the following headline: "The Nobel of Kadhafi: Libyan authorities create a new human rights prize. Jean Ziegler sticks his hands in the dough." The story begins as follows:

According to Jean Ziegler, "the Nobel Prize is a permanent humiliation for the Third World." The timing couldn't be better—just as Libya is trying to restore its image. With the interest of 10 million dollars—placed in a Swiss bank—it plans to create an international institute for human rights (planned in Geneva) and two "counter-Nobel Prizes." In mid-April, Jean Ziegler and ten "intellectuals and progressive fighters" thus found themselves in Tripoli to put the project on track.<sup>10</sup>

The May 8, 1989 issue of *Time* magazine also contains an item about the Khaddafi Prize quoting Mr. Ziegler as a representative of the prize committee.<sup>11</sup>

#### B. Jean Ziegler's Ongoing Relationship with the Khaddafi Prize Organization

Mr. Ziegler's continuing connections to the Khaddafi Prize are referenced in a 1991 *Jerusalem Post* story about a legal case in Switzerland that resulted in his conviction for libel: "During the trial [of the case], criticism was heard of Ziegler's involvement in Libyan leader Muammar Gaddafi's 'Peace Prize Organization.'"<sup>12</sup> Other news reports and public documents reveal the identity of this organization and confirm Jean Ziegler's ongoing role in it.

According to the Libyan press agency, the organization in Geneva that awards the Khaddafi Prize is an entity called North-South XXI (or Nord-Sud XXI).<sup>13</sup> The British press has also reported North-South XXI's role in awarding the Prize,<sup>14</sup> as has the press in Geneva. An August 30, 2002 article in *Le Temps* about the Prize states:

The Kadhafi Prize is managed in Geneva by North-South 21, which claims to be an organization for the defense of human rights. . . . It is worth noting that North-South 21 does not want to mention the financial investment of Tripoli in the Geneva center. The organization issues many periodicals and other publications but none mentions the name of the provider of funds.<sup>15</sup>

A past winner also has attributed the Prize to North-South XXI.<sup>16</sup>

Like the Khaddafi Prize, North-South XXI was founded in 1989.<sup>17</sup> In addition to awarding the Prize, North-South XXI organizes seminars and colloquia (many of which have been held in Tripoli) and issues a periodic journal of the same name. North-South XXI has special consultative status with the UN Economic and Social Council (ECOSOC), which allows it to participate at UN sessions. It has argued before UN bodies against the international sanctions on Libya, without disclosing its connections to the Khaddafi regime.<sup>18</sup>

<sup>10</sup> "Le Nobel de Kadhafi—Les autorités libyennes créent un nouveau prix des droits de l'homme. Jean Ziegler met la main à la pâte," *L'Hebdo*, 27 avril 1989 (Attachment 3; full English translation is Attachment 4).

<sup>11</sup> "World Notes: Prizes—And the Winner is . . .," *Time*, May 8, 1989 (Attachment 5).

<sup>12</sup> "Gaoon wins libel suit against Swiss MP," *The Jerusalem Post*, December 19, 1991 (Attachment 6).

<sup>13</sup> "President Chavez of Venezuela wins International Gaddafi Award for Human Rights," *Libyan Jamahiriya Broadcasting Corporation*, December 10, 2004, at [http://en.libya.net/online/news\\_details.php?id=475](http://en.libya.net/online/news_details.php?id=475) (Attachment 7); "Oxymoron," *Neue Zürcher Zeitung*, 15 Oktober 2004 (citing Libyan press agency Jana as saying the Prize is awarded by an International People's Committee and Nord-Sud XXI) (Attachment 8).

<sup>14</sup> "Gaddafi human rights prize for two dock strike wives," *The Daily Mail (London)*, September 4, 1997 (stating that Prize "[r]ecipients are chosen annually by a Geneva-based organisation called Nord-Sud 21.") (Attachment 9).

<sup>15</sup> "Un deuxième spectacle autour du Prix Kadhafi," *Le Temps*, 30 août 2000 (Attachment 10). See also "Les Noirs demandent réparation pour l'esclavage," *Le Temps*, 7 août 2001 (describing North-South XXI as "an NGO installed in Geneva and tied to Libya" and discussing a symposium "ordered and financed by Libya through North-South XXI") (Attachment 11).

<sup>16</sup> Website of Union interafricaine des Droits de l'Homme (UIDH), at [http://www.iuhr.org/article.php3?id\\_article=105](http://www.iuhr.org/article.php3?id_article=105) (noting that it won the Khaddafi Prize at the "proposal of the NGO North-South XXI"). Indeed, in a posting on the Human Rights Internet website, UIDH used the fact that the Khaddafi Prize is granted by a northern NGO, based in Geneva with ECOSOC status, to argue against those who criticized it for accepting Libyan money. See <http://www.hri.ca/partners/uidh/ncsp/budget.html> (describing how, after UIDH won the Prize, many of its partner institutions stopped funding it because of the Libya affiliation, and arguing that this was incorrect in light of the Prize being awarded by a Northern, Geneva-based, UN-accredited NGO).

<sup>17</sup> Entry for North-South XXI on the European Network for Law and Society, at <http://www.rcds.msh-paris.fr/publications/collivier/delplanque/biblio.htm> (describing North-South XXI as "une organisation non gouvernementale de défense des Droits de l'Homme et des Peuples, fondée en 1989, ayant un statut consultatif auprès du Conseil Economique et Social des Nations-Unies (ECOSOC). Elle a son siège à GENEVE et édite une revue du même nom. . . ."). ["a non-governmental organization for the defense of human and peoples rights, founded in 1989, having consultative status to the UN ECOSOC. It has its headquarters in Geneva and edits a revue of the same name. . . ."]

<sup>18</sup> See Written Statement of North-South XXI to the Commission on Human Rights, 55<sup>th</sup> Session (E/CN.4/1999/NGO/40) (arguing against sanctions in general and against the sanctions on Libya in particular); Written Statement of North-South XXI to



North-South XXI is located in Geneva at rue Ferdinand-Hodler, number 17.<sup>19</sup> Its director is Ahmad Soueissi, and its chairman is Ahmed Ben Bella.<sup>20</sup> Mr. Ben Bella and Mr. Soueissi are also chairman and secretary, respectively, of a similarly-named organization at the same address: the Institut Nord-Sud pour le dialogue interculturel.<sup>21</sup> The vice-chairman of the Institut Nord-Sud, according to official records of the canton of Geneva, is Jean Ziegler.<sup>22</sup> Several websites identify the Institut as the source of the North-South XXI journal,<sup>23</sup> and one describes it as “presided over by Jean Ziegler.”<sup>24</sup>

The Institut Nord-Sud is managed and financed by the Fondation Nord-Sud pour le dialogue interculturel.<sup>25</sup> The Fondation seems to have the same street address as North-South XXI and the Institut.<sup>26</sup> The officers of the Fondation are the same as of the Institut: Mr. Ben Bella, chairman; Mr. Ziegler, vice-chairman; and Mr. Soueissi, secretary.<sup>27</sup>

Neither Mr. Ziegler’s biographical data supporting his Sub-Commission candidacy,<sup>28</sup> nor his official university CV,<sup>29</sup> nor the biography on his right to food website,<sup>30</sup> make any mention of the Khaddafi Prize, the Fondation Nord-Sud, the Institut Nord-Sud, or North-South XXI.

After the April 11 joint NGO letter protesting Mr. Ziegler’s nomination to the Sub-Commission, North-South XXI issued a statement supporting Mr. Ziegler and accusing UN Watch of a “campaign of denigration” against him.<sup>31</sup> This statement did not disclose Mr. Ziegler’s connections to North-South XXI.

### C. Jean Ziegler’s Receipt of the Khaddafi Prize

Since its founding, the Libyan government—assisted by Jean Ziegler and the other Prize organization officers—has used the Khaddafi Prize as a propaganda tool;<sup>32</sup> as a method for funding sympathetic NGOs;<sup>33</sup> as a means to celebrate prominent

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the Commission on Human Rights, 54<sup>th</sup> Session (E/CN.4/1998/NGO/83) (arguing that sanctions against Libya violate children’s rights).

<sup>19</sup> [www.nordsud21.org](http://www.nordsud21.org) (Attachment 12).

<sup>20</sup> *Id.*; UN NGO Database entry for North-South XXI, at [http://www2.unog.ch/ngo/ngo\\_search\\_document.asp?lang=en&ongid=918](http://www2.unog.ch/ngo/ngo_search_document.asp?lang=en&ongid=918) (Attachment 13).

<sup>21</sup> Entry for Institut Nord-Sud pour le dialogue interculturel, Registre du commerce de Genève, at [http://re.geneve.ch/re/consultation/consultationcomplete.asp?no\\_dossier\\_fed=CH-660-1684998-3](http://re.geneve.ch/re/consultation/consultationcomplete.asp?no_dossier_fed=CH-660-1684998-3) (Attachment 14).

<sup>22</sup> *Id.*

<sup>23</sup> “Le Monde Diplomatique, Revues,” at <http://www.monde-diplomatique.fr/revues/nordsud>; Philippe Corcuff, *Liste des publications*, at <http://www.cerlis.fr/pagesperso/permanents/corcuff/philippepubli.htm> (listing one article as follows: “Avec Éric Doidy et Doumar Khrissi, “S’émanciper des langues de bois : originalité du langage zapatiste”, dans *Club Merleau-Ponty, La pensée confisquée - Quinze idées reçues qui bloquent le débat public*, 1997, Paris : La Découverte; réédité en 2001, Nord-Sud XXI (Institut Nord-Sud pour le dialogue interculturel, Genève), n°16 (4)”).

<sup>24</sup> “Le Monde Diplomatique, Revues,” at <http://www.monde-diplomatique.fr/revues/nordsud>.

<sup>25</sup> Entry for Fondation Nord Sud pour le dialogue interculturel, Registre du commerce de Genève, at [http://re.geneve.ch/re/consultation/consultationcomplete.asp?no\\_dossier\\_fed=CH-660-1881999-1](http://re.geneve.ch/re/consultation/consultationcomplete.asp?no_dossier_fed=CH-660-1881999-1) (Attachment 15).

<sup>26</sup> The Fondation’s address in the Geneva registry of commerce is in care of a Geneva fiduciary society. However, an entity called the Nord-Sud Fondation ([www.nordsud-dialogue.org](http://www.nordsud-dialogue.org)), is also found at rue Ferdinand-Hodler 17, and has the same phone number, fax number, email address, and director as North-South XXI (Attachment 16).

<sup>27</sup> Entry for Fondation Nord Sud pour le dialogue interculturel, Registre du commerce de Genève, at [http://re.geneve.ch/re/consultation/consultationcomplete.asp?no\\_dossier\\_fed=CH-660-1881999-1](http://re.geneve.ch/re/consultation/consultationcomplete.asp?no_dossier_fed=CH-660-1881999-1) (Attachment 15).

<sup>28</sup> Report of the Sub-Commission on the Promotion and Protection of Human Rights: Election of Members, Commission on Human Rights, 62<sup>nd</sup> Session, pp. 55-56 (E/CN.4/2006/80).

<sup>29</sup> <http://www.unige.ch/ses/socio/ziegler.html>.

<sup>30</sup> <http://www.righttofood.org/team.htm>.

<sup>31</sup> “Une campagne malveillante contre le Suisse et le Professeur Jean Ziegler,” at [http://altermonde-levillage.nuxit.net/article.php3?id\\_article=5574](http://altermonde-levillage.nuxit.net/article.php3?id_article=5574).

<sup>32</sup> For example, Libya has cited the existence of the Khaddafi Prize in international fora as evidence of its human rights commitment. See, e.g., “Committee on Elimination of Racial Discrimination Considers Report of Libya, March 3, 2004, at <http://www2.unog.ch/news2/documents/newsen/crd04009e.htm> (Libyan delegation “hoped that the Committee was aware of all the activities that the Libyan Government had undertaken to uphold human rights. The Quadafi Human Rights Award was created in 1989 and was bestowed to those who had exemplified the values of human rights.”). Additionally, in a cynical attempt at credibility, the first award was granted to a genuine human rights activist, Nelson Mandela.

<sup>33</sup> The Geneva-based NGO CETIM (Centre Europe Tiers Monde), which opposes economic sanctions, was a Khaddafi Prize winner in 2000. CETIM has published Mr. Ziegler’s work, and also has praised him for his “heroic” courage in standing up to



anti-Americans and to highlight issues meant to embarrass Western nations;<sup>34</sup> as a means to celebrate prominent racists and anti-Semites;<sup>35</sup> and as a way to provide moral support for those who participate in the Palestinian intifada.<sup>36</sup>

In September 2002, Mr. Ziegler himself was among 13 “intellectual and liter[ary] personalities” given the Prize for their “thought and creativity.”<sup>37</sup> Among those with whom he shared the award was Roger Garaudy, a convicted French Holocaust denier.<sup>38</sup> By this time, the prize money reportedly amounted to US\$750,000.<sup>39</sup> The Swiss newspaper *Le Temps* reported that Mr. Ziegler’s share of the purse would approach 100,000 Swiss francs.<sup>40</sup>

The day after the 2002 Khaddafi Prize was awarded, Mr. Ziegler announced from Tripoli—where he said he was on an unspecified UN mission—that he had turned it down “because of [his] responsibilities at the United Nations.”<sup>41</sup> (He had, in 2000, been appointed as UN Special Rapporteur on the right to food.) The next day he gave an additional reason, saying that he would have turned down the Prize anyway because “I have never accepted prizes and won’t start to do so now.”<sup>42</sup> Mr. Ziegler neither disclosed nor gave as a reason for refusing the award the obvious conflicts of interest resulting from his role in the Prize’s founding and his vice-chairmanship of the organizations that manage and award it.<sup>43</sup>

Despite his avowed rejection of the award, Mr. Ziegler’s name continued to be listed by the Libyan press service as a past Khaddafi Prize laureate as recently as November, 2005.<sup>44</sup> Additionally, a December 2005 article in the Swiss newspaper

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the United States in his position as Special Rapporteur on the Right to Food. Malik Ozden, “La guerre en Irak sonnera-t-elle le glas de l’ONU?,” *Le Courrier*, 11 avril 2003, at <http://www.cetim.ch/fr/documents/03irak-articlecetim.pdf>. In its NGO profile on the website of the Centre for Applied Studies in International Negotiation (CASIN), CII/IM lists North-South XXI as one of its partner organizations. See <http://www.casin.ch/web/pdf/cetim.pdf>.

<sup>34</sup> Past Khaddafi Prize winners have included Hugo Chavez (2004), Fidel Castro (1998), and “the children of Iraq and victims of hegemony and embargoes” (1999).

<sup>35</sup> Former Malaysian Prime Minister Mahatir Mohamed, the 2005 Prize winner, made a blatantly anti-Semitic speech to an October 2003 meeting of the Organization of the Islamic Conference, in which he blamed Jews for all the world’s problems, among other hateful accusations. 1996 Prize Winner Louis Farrakhan has frequently used racist and anti-Semitic rhetoric. Roger Garaudy, one of the 2002 Prize recipients (along with Jean Ziegler), was convicted of anti-Semitism and fined \$18,000 by a French court for distorting the number of Jews killed in the Holocaust.

<sup>36</sup> The 1990 Prize was awarded to the “stone throwing children of Occupied Palestine.”

<sup>37</sup> “Al-Gadhafi Human Rights Prize awarded to President Chavez,” *Jamahiriyu News Agency (Jana)*, November 24, 2004 (listing past prize recipients including Mr. Ziegler in 2002) (Attachment 17).

<sup>38</sup> “French Holocaust denier, Swiss campaigner for victims share Kadhaifi prize,” *Agence France Presse–English*, September 30, 2002 (Attachment 18); “‘Prix Kadhaifi des droits de l’homme’ Jean Ziegler et Roger Garaudy parmi les treize lauréats,” *Schweizerische Depeschagentur AG (SDA)–Service de base français*, 30 septembre 2002 (Attachment 19). In addition to making him a Prize co-recipient in 2002, Mr. Ziegler reportedly came to Mr. Garaudy’s defense in 1996 in the controversy over his Holocaust-denying book. See “La Tentative du dialogue suscite les réserves des invités juifs: La présence sur les listes des invités d’Abdullah al-Furky, secrétaire générale de la Ligue islamique mondiale, et de Michel Lelong, ami du négationniste Roger Garaudy, provoque la perplexité,” *Le Temps*, 1 juillet 2004 (“En effet, à l’instar de Jean Ziegler et de l’Abbé Pierre, Michel Lelong avait pris la défense de Roger Garaudy en 1996, lorsque ce dernier fut attaqué pour la publication de son livre révisionniste *Les mythes fondateurs de la politique israélienne*.”) [“In fact, like Jean Ziegler and Father Pierre, Michel Lelong defended Roger Garaudy in 1996, when the latter had been attacked about the publication of his revisionist book *The Founding Myths of Israeli Politics*.”] (Attachment 20).

<sup>39</sup> “French Holocaust denier, Swiss campaigner for victims share Kadhaifi prize,” *Agence France Presse–English*, September 30, 2002 (Attachment 18); “‘Prix Kadhaifi des droits de l’homme’ Jean Ziegler et Roger Garaudy parmi les treize lauréats,” *Schweizerische Depeschagentur AG (SDA)–Service de base français*, 30 septembre 2002 (Attachment 19).

<sup>40</sup> “Jean Ziegler refuse le ‘prix Kadhaifi des droits de l’homme,’” *Le Temps*, 2 octobre 2002 (Attachment 21). At that time, 100,000 CHF amounted to around US\$67,000.

<sup>41</sup> “Swiss human rights campaigner turns down ‘Kadhaifi’ award,” *Agence France Presse–English*, October 1, 2002 (Attachment 22); “‘Prix Kadhaifi pour les droits de l’homme’ Jean Ziegler a refusé la récompense,” *Schweizerische Depeschagentur AG (SDA)–Service de base français*, 1 octobre 2002 (Attachment 23); “Jean Ziegler refuse le ‘prix Kadhaifi des droits de l’homme,’” *Le Temps*, 2 octobre 2002 (Attachment 21).

<sup>42</sup> “Jean Ziegler refuse le ‘prix Kadhaifi des droits de l’homme,’” *Le Temps*, 2 octobre 2002 (Attachment 21). In fact, Mr. Ziegler has accepted awards, such as the “SwissAward” in January 2005.

<sup>43</sup> A March 2002 official filing with the canton of Geneva lists Mr. Ziegler as vice-chairman of the Institut Nord-Sud approximately six months before he won the Prize. *Feuille d’Avis Officielle du canton de Genève*, lundi 18 mars 2002, 442/10, at [http://www.geneve.ch/fao/pdfs/250\\_032.pdf](http://www.geneve.ch/fao/pdfs/250_032.pdf) (Attachment 24). Additionally, in September 2003, Mr. Ziegler signed a petition on behalf of the Fondation Nord-Sud. “Pétition pour l’annulation de la dette de l’Iraq et pour l’exigence de réparations,” at [http://www.lagauche.com/lagauche/article.php3?id\\_article=640](http://www.lagauche.com/lagauche/article.php3?id_article=640) (signature of “Ziegler Jean (écrivain, Fondation Nord-Sud pour le Dialogue, Suisse)”) (Attachment 25).

<sup>44</sup> “Le Prix Kadhaifi des droits de l’homme quatre fois,” *Agence Jamahiriyu Presse (Jana)*, November 30, 2005, at <http://www.janancws.com/Page.aspx?PageID=16211> (Attachment 26). See also <http://www.libyen-news.de/November2004-ent2.htm> (listing Ziegler as 2002 Khaddafi Prize recipient in November 2004) (Attachment 27).



*Neue Zürcher Zeitung* reported that Mr. Ziegler did accept the 2002 Khaddafi Prize, although as the representative of his research center at the University of Geneva, the Laboratoire de sociologie des sociétés du tiers monde (Sociology Laboratory of Third-World Societies).<sup>45</sup>

### III. Questions About Violations Committed by Jean Ziegler

The evidence set forth above, gathered from the attached UN documents, Swiss and international news sources, and official filings, demonstrably contradicts Mr. Ziegler's denial of connections with the Khaddafi Prize. It also raises many troubling questions, including:

- Given his concealed connections with the Libyan-government funded Khaddafi Prize and its affiliated Geneva organizations, does Mr. Ziegler possess the impartiality, independence, integrity, and freedom from conflict of interest required of a UN human rights expert?
- In hiding and denying his links to the Khaddafi Prize organizations, did Mr. Ziegler run afoul of UN ethics rules?<sup>46</sup>
- Did Mr. Ziegler's involvement in managing and awarding the Khaddafi Prize money violate the UN economic sanctions against Libya—which included the freezing of Libyan funds and financial resources in other countries—during their time in existence?
- In awarding the Prize and its accompanying funding to racists, such as convicted French Holocaust denier Roger Garaudy, did Mr. Ziegler aid and abet any violation of Switzerland's anti-racism law?<sup>47</sup>

### IV. Recommendations

The new UN Human Rights Council convened for the first time on June 19. Among the Council's expected actions in its first, two-week session will be the extension, for one year, of all existing Special Rapporteurs and the appointment of experts to the Sub-Commission. Mr. Ziegler is therefore up for appointment to two separate UN expert positions: a renewed appointment as the Human Rights Council's expert on the right to food, and a new appointment as expert of the Council's Sub-Commission. If the Council's founding group of independent human rights experts were to include an individual with substantial ties to Libya—whose notorious 2003 election as chair of the Council's predecessor body helped to bring about its demise—the harm to the new entity's credibility, legitimacy and effectiveness might be irreparable.

In light of the evidence detailed above,

- **UN Secretary-General Kofi Annan, UN High Commissioner for Human Rights Louise Arbour and the UN Ethics Office** should initiate an immediate investigation of whether Mr. Ziegler's conduct has violated any UN ethics rules;
- **UN Human Rights Council President Luis De Alba** should work to ensure that Mr. Ziegler is not appointed to either expert post, and should investigate Mr. Ziegler's possible breach of UN ethics and conflict of interest rules;
- **Mr. Vítit Muntarborn, Chair of the Special Procedures Coordination Committee of the UN Human Rights Council**, should investigate whether Mr. Ziegler's actions and misrepresentations have damaged the standing of the Special Procedures system, and consider disciplinary action;
- **Mr. Ziegler** should immediately withdraw his candidacy for election as an expert to the Human Rights Council's Sub-Commission, and for renewal as the Council's Special Rapporteur on the right to food;
- **Switzerland** should immediately rescind Mr. Ziegler's nomination to the Sub-Commission and oppose the extension of his term as expert on the right to food;
- **Members of the UN Democracy Caucus** who are on the Human Rights Council—including the **United Kingdom, France, Germany and Canada**—should not only refuse to support Mr. Ziegler's Sub-Commission appointment, but also should oppose the planned extension of his current position as Special Rapporteur on the right to food.

<sup>45</sup> "Führerstaat, Frisch gestrichen," *Neue Zürcher Zeitung*, 25 December 2005 (Attachment 28). Coincidentally or not, Mr. Ziegler's Geneva research center was founded in 1989, the same year in which Mr. Ziegler announced the Libyan leader's \$10 million bequest for the Khaddafi Prize, and in which North-South XXI was founded.

<sup>46</sup> UN officials are supposed to disclose "any leadership or policymaking role in any non-United Nations entity" and any "involvement in any other activity that could have an impact on the [official's] objectivity or independence . . . or otherwise affect the [UN's] image or reputation." UN Document ST/SGB/2005/19. They also must make certain financial disclosures, including of gifts or favours from a government of more than a specified amount (currently \$250; or \$10,000 prior to December 2005). This latter provision may be implicated if Mr. Ziegler did in fact accept, but did not disclose, any money from the 2002 Khaddafi Prize.

<sup>47</sup> Swiss Criminal Code Article 261bis prohibits, among other racist acts, the denial, gross minimization, or attempt to justify a genocide or other crimes against humanity.





JEAN ZIEGLER'S CAMPAIGN AGAINST AMERICA

*A Study of the Anti-American Bias of the  
U.N. Special Rapporteur on the Right to Food*

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Key Findings

- Jean Ziegler, the U.N. Special Rapporteur on the right to food, is abusing his mandate to further his extreme anti-American political agenda at the expense of addressing the world's food emergencies. He should be removed and replaced with an individual who will impartially, objectively and non-selectively carry out the mandate.
- During the first four years of his mandate, Jean Ziegler publicly criticized the United States on 34 occasions. Yet he *never* spoke out for the hungry or criticized any party in 15 of 17 countries deemed by the U.N. Food and Agriculture Organization to have a man-made food emergency. And of the 2 food emergency countries that he did criticize, he only did so once with respect to one (Ethiopia) and three times with respect to the other (Sudan). (Food emergencies ignored: Burundi, Central African Republic, Chad, Democratic Republic of the Congo, Republic of the Congo, Cote d'Ivoire, Eritrea, Guinea, Haiti, Liberia, Russian Federation (Chechnya), Sierra Leone, Somalia, Tanzania, Uganda)
- Jean Ziegler frequently appends a food-related pretext to his personal political positions in order to justify employing the prestige of his U.N. office. Thus, his political opposition to U.S. military action in both Afghanistan and Iraq — matters entirely outside his competence as Special Rapporteur — over time evolved into alleged violations of the right to food.
- Jean Ziegler almost never criticizes any government other than the U.S. and Israel. When he does, he suddenly dons the gloves of ginger U.N. diplomacy. Hence the Sudanese atrocities in Darfur for Ziegler are merely a cause for "concern," the role of the Khartoum regime in atrocities only "alleged." By contrast, the United States is an "imperialist dictatorship" responsible for all the world's misery, President Bush is "the Pinochet who sits in the White House," the U.S. is committing "genocide" in Cuba, and Israel commits "state terror" and "war crimes" with the U.S.'s blessing. Mr. Ziegler has never used such denunciations against the government of Sudan, or any other country.
- Jean Ziegler has repeatedly condemned the U.S. embargo of Cuba as a "flagrant" violation of the right to food and of international law. Yet Cuba has *never*, during the period of Mr. Ziegler's mandate, appeared on the U.N. Food and Agriculture Organization's Food Emergency list.



## Introduction

This report addresses a pattern and practice of anti-American bias by Jean Ziegler, the U.N. Special Rapporteur on the right to food, that undermines the credibility of the U.N. human rights apparatus and neglects the world's hungry. In October 2004, we issued a study, *Blind to Burundi*, demonstrating that Mr. Ziegler has used his position to further his own political agenda at the expense of addressing the world's food emergencies. There, we focused on his abuse of mandate to disproportionately criticize one of his favorite political targets, Israel. Mr. Ziegler's other favorite targets are corporations, international financial institutions, and the United States. This paper examines Mr. Ziegler's abuse of his U.N. mandate on food in order to target the United States under various pretexts.

During the first four years of his mandate, Mr. Ziegler publicly criticized the United States on 34 occasions — mostly for its alleged policies or actions vis-à-vis Cuba, Afghanistan, and Iraq, and its purported control of the international financial institutions and thereby the world economy. By contrast, during the same time period, he *never* spoke out for the hungry or criticized any party in 15 of 17 countries deemed by the U.N. Food and Agriculture Organization (FAO) to have a man-made food emergency. And, of the 2 food emergency countries of which he was critical, he only did so once with respect to one (Ethiopia), and three times with respect to the other (Sudan).

The Special Rapporteur for food is mandated to work toward eradicating the scourge of hunger. Because food problems exist in many countries, the Special Rapporteur must allocate his limited time and resources according to some logical criteria. Yet Mr. Ziegler has failed to respect any objective criteria whatsoever. Instead, he has consistently abused his U.N. position to single out and demonize particular countries — the United States and Israel — to advance his own extreme political views, rather than to advance the right to food.

## Our Study

Our conclusions are based on an examination of Mr. Ziegler's statements between September 2000 and December 2004, from three different sources:

- (1) U.N. press release archives, as found on the U.N.'s electronically-searchable website. These contain every U.N. press release issued by Mr. Ziegler, as well as official summaries of Mr. Ziegler's statements and reports from diverse U.N. events and conferences;
- (2) Documents placed by Mr. Ziegler on his own website ([www.righttofood.org](http://www.righttofood.org)); and
- (3) Statements made by Mr. Ziegler to the French- and English-language media, as found on a search of the comprehensive Nexis international news database.

By searching these databases and reviewing the retrieved articles, we found 34 statements during the relevant period in which Mr. Ziegler was critical of the United States.<sup>1</sup>

Because Mr. Ziegler's mandate is to speak out against hunger in the world, we then compared Mr. Ziegler's treatment of the United States with his treatment of countries listed on the FAO's Food Emergencies list. From the 35 countries on the May 2004 list, we selected a sample of 17 countries. We chose these countries because for all of them, the FAO attributed the food emergency to some human action (e.g., war), rather than a natural disaster, so criticism of one or another party was possible.

By searching the sources discussed above, we found that during the relevant period, of the 17 countries with man-made food emergencies, Mr. Ziegler criticized the government or another party in only two, Ethiopia and Sudan. We found one instance of criticism related to Ethiopia, and three instances related to Sudan. By comparison, as mentioned above, there were 34 instances during the same time period in which Mr. Ziegler criticized the United States.<sup>2</sup>

## Conclusions

Under international law, U.N. independent human rights experts are obliged to act with impartiality, objectivity, and non-selectivity.<sup>3</sup> Mr. Ziegler has repeatedly flouted these standards. He has neglected the world's real food emergencies, where millions are dying from starvation, in order to focus on his favorite political targets, one of which is the United States.<sup>4</sup>

Mr. Ziegler is a former Swiss Socialist party politician who in 1989 — shortly after Libya bombed Pan Am flight 103, killing 270 people from 21 countries, including 189 Americans — helped to found the Moammar Khadafi Human Rights Prize.<sup>5</sup> Mr. Ziegler himself was then awarded the prize in 2002.<sup>6</sup> In 2004, he was a contributor to the inaugural issue of *L'Empire* ("The Empire"),

<sup>1</sup> See Selected Quotes from Jean Ziegler and Bibliography of Jean Ziegler's Statements, pp. 9 – 12 *infra*.

<sup>2</sup> See Table: A Comparison of Jean Ziegler's Treatment of the United States and Food Emergency Countries, p. 8 *infra*.

<sup>3</sup> General Assembly Resolution 48/141 of 20 December 1993.

<sup>4</sup> We are not the first to raise this complaint. In 2004, the United States requested that the Commission on Human Rights reprimand Mr. Ziegler for his "irresponsible and unfounded statements and for abusing his mandate to generate misleading polemics on issues beyond his competence and expertise." *U.S. Explanation of Vote on Commission Resolution on the Right to Food*, 16 April 2004.

<sup>5</sup> See [http://www.unwatch.org/pdf\\_files/Ziegler\\_creates\\_Khadafi\\_Human\\_Rights\\_Prize.pdf](http://www.unwatch.org/pdf_files/Ziegler_creates_Khadafi_Human_Rights_Prize.pdf)

<sup>6</sup> See [http://www.unwatch.org/pdf\\_files/UN\\_position\\_prohibits\\_prize.pdf](http://www.unwatch.org/pdf_files/UN_position_prohibits_prize.pdf)



Europe's first magazine dedicated to anti-Americanism, providing an article criticizing American imperialism and the war on terror.<sup>7</sup> In both the article and his 2005 book, *L'Empire de la Honte* ("The Empire of Shame"), Mr. Ziegler used his U.N. Special Rapporteur title.

Mr. Ziegler frequently takes one of his personal, preexisting political positions that does not concern food and appends to it a food-related pretext, in order to justify employing the prestige of his U.N. office. For example, in the fall of 2001, less than two weeks after Al Qaeda's September 11 terrorist attacks against the United States, Mr. Ziegler announced his political opposition to any potential U.S. military response against the Taliban regime that hosted Al Qaeda, saying it would have "apocalyptic" consequences and cause "the end for the Afghan nation."<sup>8</sup> Within weeks, Mr. Ziegler's political opposition to the war metamorphosed into a "food" objection, with his claim that food drops by the Allies were prohibited first on the ground that they compromised "the key principles of humanitarian organizations and international law" (a fallacious proposition), and then on grounds that they might end up feeding the Taliban. All along, of course, the Special Rapporteur was transparently acting out of his political opposition to the war itself—a matter entirely outside his competence. A similar evolution occurred with respect to the Iraq war.<sup>9</sup>

Mr. Ziegler is a great admirer of Cuba who believes that the island's economic system can provide a counter-model to the capitalist system which he so opposes. Not surprisingly, much of his criticism of the United States centers on its economic boycott of Cuba, which he characterizes as the sole reason for the country's problems and as a "flagrant" violation of the right to food and of international law in nearly every report he submits to the Commission on Human Rights and the General Assembly. According to his most recent report to the Commission, he is planning a visit to Cuba. (Cuba apparently welcomes Mr. Ziegler's visit, although it has consistently denied entry to Christine Chanet, the Personal Representative of the High Commissioner for Human Rights on the situation of human rights in Cuba.<sup>10</sup>) Yet Cuba has never, during the time period of Mr. Ziegler's mandate, appeared on the FAO's food emergency list.<sup>11</sup> Why has the Special Rapporteur for food paid so much attention to a country without a food emergency when, during his tenure, the FAO's food emergency lists have comprised between 31 and 45 other countries? The only possible explanation is Mr. Ziegler's personal politics.

The vitriol of Mr. Ziegler's anti-American statements is striking, particularly when compared to his mild criticism of other countries. He has accused the U.S. of committing "genocide" in Cuba.<sup>12</sup> In his view, "American imperialism and its guilty arrogance are solely responsible for" all the world's misery.<sup>13</sup> He has said that the American government is an imperialist dictatorship that uses "predators" and "mercenaries" to implement its world domination.<sup>14</sup> He has called President Bush "the Pinochet who sits in the White House."<sup>15</sup> With respect to Sudan, by contrast, Darfur is merely a cause for "concern"; the role of the Khartoum regime in atrocities only "alleged."<sup>16</sup>

To be sure, the United States is not above criticism. Like every other country—and perhaps more so as the leader of the free world—the United States must be held to account for its human rights record. There is no question that the U.S. war on terror has occasioned a number of serious human rights violations. Even President Bush has acknowledged abuses that were abhorrent and "a stain on our country's honor."<sup>17</sup> We also recognize that in his private capacity, Mr. Ziegler is entitled to his own opinions. But Mr. Ziegler is not entitled to use his U.N. position as Special Rapporteur as a platform to express his personal, political views having nothing to do with the right to food. Mr. Ziegler's actions cause grave damage to the integrity of the Special Procedures, the mechanism under which the U.N. appoints independent experts for country-specific or thematic rights issues. Indeed, Mr. Ziegler's frivolous statements and abuse of mandate weaken the ability of other independent experts to credibly critique the record of the United States or that of any other country. Worst of all, he has deprived the world's hungry of the benefit of the mechanism that the U.N. created for them in 2000.

<sup>7</sup> See <http://www.empire-american.com> and [http://www.unwatch.org/pdf\\_files/1\\_empire2004.pdf](http://www.unwatch.org/pdf_files/1_empire2004.pdf)

<sup>8</sup> "U.N. Swiss envoy warns of apocalyptic consequences of U.S. strikes on Afghanistan," *Swiss Radio International's Swissinfo website*, 22 September 2001, cited by *BBC Morning Europe*, 23 September 2001.

<sup>9</sup> In February 2003, Mr. Ziegler publicly stated that war in Iraq should be avoided at all costs, and even proposed that Switzerland offer exile to Saddam Hussein. See "Swiss rights campaigner urges Swiss exile for Saddam," *Agence France Presse—English*, 5 February 2003. By April 2003, he was accusing Coalition forces of violating the rights to food and water in Iraq. See "Un expert de l'ONU dénonce les violations du droit à l'alimentation en Irak," *Agence France Presse*, 3 avril 2003, "UN rights expert demands aid agencies get access to feed Iraqis," *Agence France Presse—English*, 3 April 2003.

<sup>10</sup> See, e.g., "Cuba, U.S. claim U.N. victory," *UPI*, 15 April 2005.

<sup>11</sup> See FAO lists of countries facing food emergencies from September/October 2000 to June 2005 at <http://www.fao.org/news/english/fs/index.htm>.

<sup>12</sup> See <http://www.radioangulo.cu/english/dianoingles/2005/march/190305unrapporteur.htm>.

<sup>13</sup> "Le sentiment anti-américain grandit dans la nouvelle Allemagne de Gerhard Schröder," *Le Temps*, 22 mai 2002.

<sup>14</sup> J. Ziegler, "Le maelstrom de la mondialisation," *Le Temps*, 28 octobre 2002.

<sup>15</sup> "Jean Ziegler s'attaque aux États-Unis, au FMI et à l'OMC," *SDA*, 27 janvier 2003.

<sup>16</sup> U.N. Press Release AFR/873, IIR/CN/1065, 29 March 2004. See also "Nearly twice as many Iraqi children going hungry since Saddam's ouster, U.N. expert says," *Associated Press*, 30 March 2005 (condemning coalition forces, but not insurgents, for causing malnutrition in Iraq, while only expressing "concern" about hunger in other countries including Sudan and North Korea).

<sup>17</sup> See, e.g., "Bush apologizes for abuse of Iraqis," *Agence France Presse—English*, 6 May 2004.



**Recommendations**

In light of Mr. Ziegler's repeated and continuing abuse of mandate, we are requesting:

- That U.N. Secretary-General Kofi Annan, U.N. High Commissioner for Human Rights Louise Arbour, President of the U.N. General Assembly Jan Eliasson, and Chair of the General Assembly's Third Committee Francis K. Butagira condemn Jean Ziegler for bias and for undermining the U.N.'s human rights mechanisms;
- That Makarim Wibisono, Chairman of the U.N. Commission on Human Rights, should remove Jean Ziegler from the position of Special Rapporteur on the right to food for abuse of mandate and replace him with an individual who will impartially, objectively and non-selectively carry out the mandate;
- That, if the Chairman does not do so, the 53 State Members of the U.N. Commission on Human Rights should convene to adopt a resolution terminating Jean Ziegler's term for abuse of mandate and replace him with an individual who will impartially, objectively and non-selectively carry out the mandate;
- That, failing action by the Chairman or the State Members of the Commission, Jean Ziegler should resign the position of Special Rapporteur on the right to food to allow for the appointment of an individual who will impartially, objectively and non-selectively carry out the mandate.



Table: A Comparison of Jean Ziegler's Treatment of the United States and Food Emergency Countries

Country	Instances where Jean Ziegler criticized government or other party
*Burundi	0
*Central African Republic	0
*Chad	0
*Congo, Democratic Republic of the	0
*Congo, Republic of	0
*Cote d'Ivoire	0
*Eritrea	0
*Ethiopia	1
*Guinea	0
*Haiti	0
*Liberia	0
Russian Federation (*Chechnya)	0
*Sierra Leone	0
*Somalia	0
*Sudan	3
*Tanzania	0
*Uganda	0
<b>United States</b>	<b>34</b>

\*Country or territory on the Food Emergencies List of the U.N. Food and Agriculture Organization

(Period covered: September 2000 – December 2004)



## Selected Quotes from Jean Ziegler

*Africa News*, 3 March 2004: “[T]he World Trade Organization, the American government, the Swiss bankers, the Bretton Woods institutions, all the neo-liberals. . . create illegality, exclusion and immense riches in some hands and immense misery. . . .”

J. Ziegler, “Terror and the Empire,” in *Ossietzky 2003* (published in German; English translation at <http://www.sopos.org/autsaqtzc/3d078c5a987f0/1.phtml>): After the fall of the Soviet Union, “instead of contributing to a system of collective security, the U.S. refused to dismantle the gigantic military machine built during the Cold War. Against the principle of peaceful conflict resolution, the U.S. chose the way of imperial dictatorship. . . . [I]t established the globalized world market totally ruled by American financial capital. The American capital oligarchy . . . largely dominates the Bush administration. . . .”

*Agence France Presse*, 3 avril 2003: “[Jean Ziegler] a dénoncé . . . diverses ‘violations évidentes’ [du droit à l’alimentation] commises par la coalition américano-britannique à l’encontre des civils irakiens.” (“[Jean Ziegler] condemned . . . many ‘patent violations’ [of the right to food] committed by the American and English coalition against Iraqi civilians.”)

*Agence France Presse–English*, 3 April 2003: “People [in Iraq] are dying now from poisoned water, extreme malnutrition, hunger.” Coalition forces are in “clear violation” of Geneva conventions by cutting off water supplies in parts of Iraq.

*Agence France Presse–English*, 5 February 2003: “[W]ar in Iraq would be a total human catastrophe” that should be avoided at all costs. Switzerland should offer exile to Saddam Hussein in order to avoid war.

*SDA (Swiss News Agency)*, 27 janvier 2003: “Jean Ziegler a profité . . . pour s’en prendre aux États Unis. . . . Pour lui, ceux-ci sont responsables de la misère du monde. . . . ‘Le Pinochet qui siège à la Maison Blanche’ . . . absout les actes de terreur perpétrés par le premier ministre Ariel Sharon.” (“Jean Ziegler seized the opportunity to attack the United States. According to him, they are responsible for world misery. . . . ‘The Pinochet who sits in the White House’ . . . absolves the acts of terror perpetrated by Prime Minister Ariel Sharon.”)

*Le Temps*, 13 novembre 2002: “[Les gouvernements passifs] sont ligotés par le ‘modèle macroéconomique néolibéral’ et son marché, qui étouffent les petits paysans au profit de l’agrobusiness. . . . La solution ? Il faut rejeter le ‘consensus de Washington’ . . . . Ziegler cite entre autres, Cuba : ‘Si les conditions sont si difficiles dans l’île c’est à cause du blocus américain.’” (“[The passive governments] are caught by the ‘neo-liberal macroeconomic model’ and its market which oppress small farmers to the benefit of agro-business. . . . Is there a solution? According to Ziegler, Cuba can provide a counter-model: ‘If the living conditions are so harsh in the island, it is due to the American embargo’ he asserts.”)

*L’Humanité*, 5 novembre 2002: “[L]es Américains ont proclamé: ‘Contre le multilatéralisme, nous pratiquerons la raison impériale.’ Et cette dernière a atteint son paroxysme avec l’installation de Bush à la Maison-Blanche. Le crime a été commis. . . .” (“[The Americans] proclaimed: ‘We shall develop imperialism rather than collaboration.’ This imperialist logic reached its climax with the installation of Bush at the White House. The crime was committed. . . .”)

*Le Temps*, 28 octobre 2002: “Au sommet du système: l’empire nord-américain. . . . Pour l’aider à asseoir sa puissance, il a ses relais: les ‘prédateurs’ et les ‘mercenaires’ . . . .” (“The North-American empire dominates the system. . . . It uses ‘predators’ and ‘mercenaries’ to implement its domination. . . .”)

*Le Point*, 30 août 2002: “Qui sont les maîtres de cette ‘mondialisation globalement positive’? . . . Ce sont les oligarchies détentrices du capital financier mondialisé, appuyées sur la puissance militaire des États Unis.” (“Who are the masters of this ‘overall positive globalization’? . . . Oligarchies who own globalized financial capital and are supported by America’s military power.”)

*Le Temps*, 22 mai 2002: “George Bush [est] le valet de l’oligarchie financière américaine. . . . Il n’y a pas de fatalité à la misère. L’impérialisme américain, avec sa coupable arrogance, en est seul responsable” (“George Bush [is] the valet of American financial oligarchy. . . . Misery is no fatality. American imperialism and its guilty arrogance are solely responsible for it.”)

*The Herald (Glasgow)*, 18 October 2001: U.S. food aid drops in Afghanistan were “totally catastrophic for humanitarian aid. The man with the gun picks it up, so Americans are feeding the Taliban every night.”

*La Tribune*, 16 octobre 2001, “[Jean Ziegler] affirme que les largages de rations alimentaires par les avions américains contribuent à nourrir les combattants taliban.” (“[Jean Ziegler] believes that American food drops help sustain the Taliban fighters.”)

*Swiss Radio International’s Swissinfo website*, 22 September 2001, cited by *BBC Morning Europe*, 23 September 2001: U.S. airstrikes on Afghanistan would have “apocalyptic” consequences and “would be the end of the Afghan nation.”



## Bibliography of Jean Ziegler's Statements

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#### About UN Watch

UN Watch is a non-governmental organization (NGO) based in Geneva whose mandate is to monitor the performance of the United Nations by the yardstick of its own Charter, and to promote human rights for all. UN Watch was established in 1993 under the Chairmanship of the late Ambassador Morris B. Abram, following his tenure as U.S. Permanent Representative to the U.N. in Geneva. Chaired today by Alfred H. Moses, former U.S. ambassador in Europe, UN Watch participates actively as an accredited NGO in Special Consultative Status with the U.N. Economic and Social Council.

In 2005, UN Watch led the international NGO coalition for Lebanese freedom at the U.N. Commission on Human Rights; forced Pakistan to account for its brutal arrest of two U.N. experts; and led an international NGO coalition for human rights in Zimbabwe that forced the Mugabe regime to answer before the U.N. for its violations. UN Watch is affiliated with the American Jewish Committee, an NGO founded in 1906 to advance pluralism and defend religious liberty, and which helped formulate the U.N.’s human rights principles at its establishment in 1945.

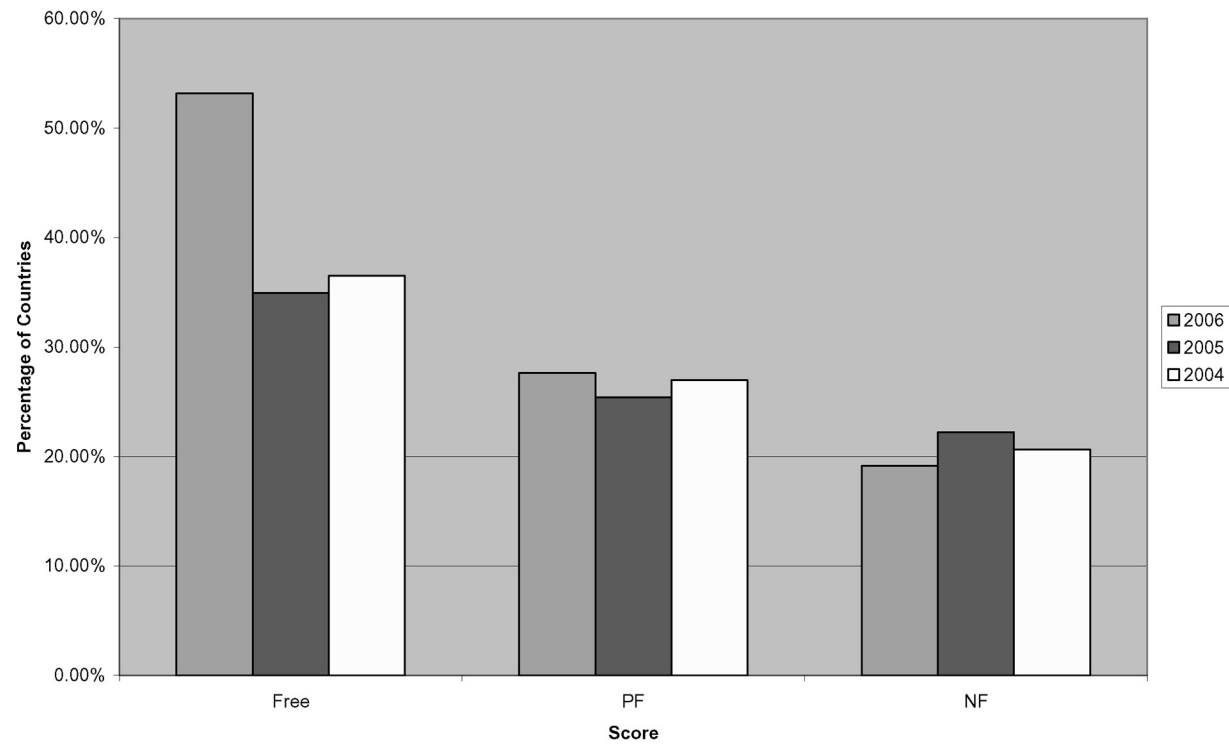
UN Watch believes in the United Nations’ mission on behalf of the international community to “save succeeding generations from the scourge of war” and provide for a more just world. We believe that even with its shortcomings, the U.N. remains an indispensable tool in bringing together diverse nations and cultures. While it would be unrealistic to ignore the U.N.’s weaknesses, we advocate finding ways to build on its strengths and use its limited resources effectively.

UN Watch is foremost concerned with the just application of U.N. Charter principles. Areas of interest include: U.N. management reform, the U.N. and civil society, equality within the U.N., and the equal treatment of member states. UN Watch has been at the forefront of the call to end the unfair treatment applied by the U.N. toward Israel, which offers an object lesson (though not the only one) in how due process, equal treatment, and other fundamental principles of the U.N. Charter are often ignored or selectively upheld.

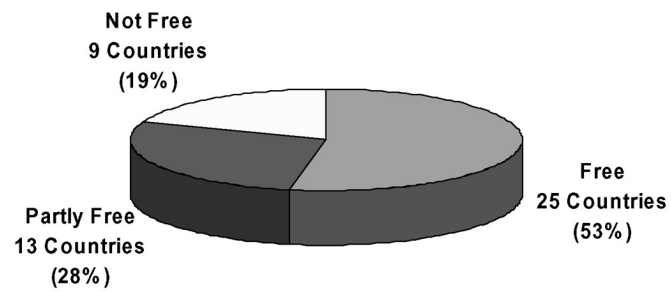
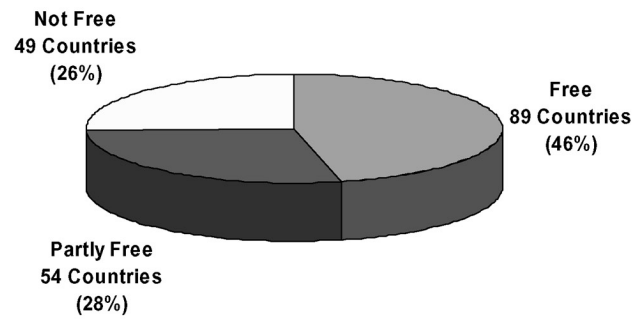
U.N. Secretary-General Kofi Annan has recognized the important role of UN Watch: “I deeply appreciate the valuable work performed by UN Watch. I believe that informed and independent evaluation of the United Nations’ activities will prove a vital source as we seek to adapt the Organization to the needs of a changing world. I can promise you that I will pay close attention to your observations and views in the years ahead.” (*Letter to Amb. Morris B. Abram, UN Watch, Jan. 30, 1997.*)



Freedom in the World Rating for UN Human Rights Council Members





**2006 UN Human Rights Council Membership****Freedom in the World**



**2006 UN Human Rights Council Membership**  
*Freedom in the World Ratings*

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**FREE (25 COUNTRIES, 53%)**

Argentina*	Mexico*
Brazil*	Netherlands*
Canada*	Peru*
Czech Republic*	Poland*
Finland*	Romania*
France*	Senegal*
Germany*	South Africa*
Ghana*	South Korea*
India*	Switzerland*
Indonesia*	Ukraine*
Japan*	United Kingdom*
Mali*	Uruguay*
Mauritius*	

**PARTLY FREE (13 COUNTRIES, 28%)**

Bahrain*	Malaysia*
Bangladesh*	Morocco*
Djibouti	Nigeria*
Ecuador*	Philippines*
Gabon	Sri Lanka*
Guatemala*	Zambia*
Jordan*	

**NOT FREE (9 COUNTRIES, 19%)**

Algeria	Pakistan
Azerbaijan	Russian Federation*
Cameroon	Saudi Arabia**
China**	Tunisia
Cuba**	

\* Community of Democracies Member

\*\* "Worst of the Worst" countries according to Freedom House's *Freedom in the World* rankings for political rights and civil liberties

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